



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States adopted four recommendations at its Forty-Fourth Plenary Session addressing: (1) Implementation of the Farmers Home Administration mediation program; (2) adjudication of civil penalties under the Federal Aviation Act; (3) specialized review of administrative action; and (4) administrative procedures used in antidumping and countervailing duty cases.

The Administrative Conference of the United States is a federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and to make recommendations for improvements.

Recommendations of the Administrative Conference are published in full text in the *Federal Register* upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR part 305).

DATES: These recommendations were adopted December 12-13, 1991, and issued December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Cari Votava, Information Officer, or Jeffrey S. Lubbers, Research Director (202-254-7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Forty-Fourth Plenary Session, held December 12-13, 1991, the Assembly of the Administrative Conference of the United States adopted four recommendations.

Recommendation 91-7, Implementation of Farmer-Lender Mediation by the Farmers Home Administration, suggests steps for improving the Farmers Home Administration's implementation of farmer-lender mediation programs under the Agricultural Credit Act. The recommendation calls on FmHA to amend its regulations to give its representatives greater flexibility in engaging in debt restructuring through mediation. It also calls for training of FmHA personnel and other steps to enable them to take full advantage of mediation, and it encourages other federal agencies involved in debt restructuring to be mindful of overall advantages of participation in mediation processes.

Recommendation 91-8, Adjudication of Civil Penalties Under the Federal Aviation Act, proposes to Congress that certain changes be made in adjudication of the administrative civil penalty program for violations of aviation safety. The Conference recommends that the program be made permanent, but that adjudication responsibility for cases involving pilots and flight engineers be transferred from the Federal Aviation Administration to the National Transportation Safety Board, if the relevant agencies and other interests cannot come to a mutually acceptable agreement.

Recommendation 91-9, Specialized Review of Administrative Action, identifies guidelines for Congress to consider in determining whether and how to create specialized courts for review of administrative action. The recommendation opposes creation of a

single specialized court for review of all administrative cases and further advises that specialized courts are appropriate for particular administrative programs only if they involve a large volume of cases, the predominance of case-specific factual issues or technical issues requiring special expertise, and a need for uniformity in agency program administration. If Congress should create such a specialized court, the recommendation proposes structural approaches to increase the court's effectiveness and minimize duplication of review functions.

Recommendation 91-10, Administrative Procedures Used in Antidumping and Countervailing Duty Cases, suggests measures that can be taken to reduce the time and expense associated with these proceedings. The Department of Commerce's International Trade Administration and the International Trade Commission are urged to develop factfinding procedures that improve development of the administrative record. Specific reforms are suggested to improve the efficiency of case processing at the ITA and to encourage more collegial decisionmaking by the ITC. The Conference also recommends that Congress authorize and fund a study of possible changes in the agency structure and judicial review procedures for antidumping and countervailing duty cases.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Part 305

Administrative practice and procedure, farmer-lender mediation, federal aviation civil penalties, specialized courts, and international trade procedures.

1 CFR part 305 is amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 571-576.

2. New §§ 305.91-7 through 305.91-10 are added to part 305, to read as follows:

§ 305.91-7 Implementation of Farmer-Lender Mediation by the Farmers Home Administration (Recommendation No. 91-7).

The Farmers Home Administration ("FmHA") is charged with serving as a temporary source of supervised credit and technical support to help rural Americans improve their farming enterprises, housing conditions, and other business endeavors until they are able to qualify for private sector resources. During the 1980s, an economic downturn seriously affected the agricultural sector and led FmHA, as a lender of last resort, to increase its loan portfolio. As the decline continued, FmHA and other lenders began more frequently to exercise their rights to accelerate loans and foreclose. Several midwestern states' legislatures responded to these economic (and resultant social) conditions by creating mediation programs, some of which required financial institutions to mediate prior to foreclosure if the borrower opted to do so. FmHA generally declined to participate in these programs or to restructure loans in connection with mediations.

In 1988, Congress passed the Agricultural Credit Act, a broad attempt to deal with problems related to farm debt. Among other things, the Act sought to encourage lenders to restructure loans when doing so would be in the government's interest and would help keep the farmer on the farm. The Act also provided for matching funds from FmHA for state mediation programs that were certified to meet prescribed standards. It further required FmHA to participate in such state mediation programs, and to make "a reasonable effort" to contact creditors and encourage them to take part in a restructuring plan. In carrying out this last requirement, FmHA has provided that delinquent borrowers in all states will routinely be offered a chance to participate in a voluntary meeting of creditors, chaired either by a mediator or a "designated FmHA representative," and has contracted for mediation services in many states that lacked mediation programs.

FmHA has found this venture into mediation to be cost effective. FmHA's approach to mediation pursuant to the

Act has been quite diverse, however. This is due in significant part to differences among the certified state programs, but also to the diversity of approaches among the mediation providers in non-certified states, variations in local conditions, dissimilarities in the attitudes of FmHA state directors towards mediation, and varying enthusiasm of other creditors, including some federal agencies. Given the size and diversity of the farm credit program and the speed with which the Act was implemented, this is hardly surprising. On the whole, the Act's mediation provisions appear to have begun to restore frayed communications between numerous farmers and lenders, assisted many farm families to avoid crises, and avoided foreclosure in a large number of cases. Still, administering these statutory provisions has not been free of problems.

In many cases, mediation has occurred too late to produce successful outcomes. The FmHA, at present, is unable to report accurately on the numbers of mediations conducted in either the certified or noncertified states. As stated above, FmHA has sometimes had difficulty in securing satisfactory participation of non-FmHA creditors, including many that are part of the Farm Credit System, and, in some areas, agencies such as the Federal Deposit Insurance Corporation, Internal Revenue Service, Resolution Trust Corporation, and Small Business Administration. Observers have raised concerns that borrowers in FmHA's loan guarantee programs—in which it guarantees loans made by banks—may not receive timely notice of mediation's availability.

Finally, the mediators used have taken strikingly divergent views of their responsibilities and authority. These might be categorized conveniently as "broad" and "narrow." In some areas—particularly states with certified mediation programs—many mediators have taken a "broad" approach and sought to uncover the parties' real interests and develop responsive options. Thus, they have tried to lower barriers to communication and to address issues, such as off-farm employment and intra-family or interpersonal questions, important to the resolution of difficulties between the farmer and lenders. In other regions, especially some states where FmHA has contracted for mediation services, neutrals have typically taken a "narrow" approach; this emphasizes much shorter, more formulaic proceedings that focus almost exclusively on whether non-FmHA creditors will adjust their debts sufficiently to permit FmHA loan

restructuring under its Debt and Loan Restructuring System computer program (DALRS). Resort to the latter approach to mediation may have been reinforced in some places by contracting procedures that emphasized low bids and by some FmHA state directors' narrow view of their mandates for restructuring under the Act. Each of these approaches has potential advantages and disadvantages and FmHA's openness to both is understandable, especially given that FmHA's resort to mediation in all but the certified states has been wholly voluntary. However, broader approaches are more likely to improve communication and assist the parties to develop diverse solutions that will meet their needs.

While FmHA's implementation of the Agricultural Credit Act's farmer-lender mediation provisions has been energetic and generally effective, the Conference recommends several steps to enhance the likelihood that mediation will be used, and used successfully, in future disputes.

Recommendation

1. FmHA should take steps to remedy problems associated with the inconsistencies between the broad and narrow approaches to mediation evidenced in farmer-lender mediation by fostering a better understanding of the potential of the broad model of mediation in both certified state mediation programs and FmHA contract mediation programs. To achieve that goal, the FmHA should:

(a) Modify FmHA rules for processing delinquent loans to the extent necessary to give FmHA representatives at farmer-lender mediations greater discretion with respect to loan restructuring and providing new loans. FmHA should advise its personnel, mediators, and others involved in farmer-lender mediation that the Debt and Loan Restructuring System (DALRS) computer program should not significantly limit the purposes of mediation. FmHA also should encourage its county offices to initiate mediation proceedings at an appropriately early stage in the processing of delinquent loans.

(b) Provide additional training, including videotapes, to FmHA and other personnel who will be connected with farmer-lender mediation processes. Training should include approaches to mediation and emphasize problem-solving negotiation skills.

2. FmHA should enhance its ability to manage and improve the farmer-lender mediation program by:

(a) Ensuring that certified state mediation programs make timely, uniform submissions concerning numbers and results of mediations.

(b) Improving the system by which FmHA collects information on mediations conducted through FmHA state offices in noncertified states.

(c) Supporting research dealing with the conduct and short- and long-term outcomes of farmer-lender mediations. This research should examine economic outcomes, the extent to which mediators follow different mediation approaches in practice, and the extent to which varying approaches, as practiced, result in different kinds of outcomes, levels of participation, or levels of satisfaction among the various participants.

3. FmHA should take appropriate measures to notify parties to guaranteed (as opposed to direct) loans of the availability of farmer-lender mediation, without however revealing the borrowers' identities without their consent.

4. FmHA and the Department of Agriculture should:

(a) Continue to encourage additional states to develop farmer-lender mediation programs that can qualify to receive matching funds.

(b) Encourage full participation in farmer-lender mediation by institutions of the Farm Credit System and all appropriate agencies of the Department.

(c) Take steps to encourage the continuing development of a diverse, capable cadre of available mediators, including the use of volunteers.

5. All federal agencies that may be involved in farm credit disputes, such as the Federal Deposit Insurance Corporation, the Internal Revenue Service, the Resolution Trust Corporation, and the Small Business Administration, should consider the overall advantages of broad participation in farmer-lender mediation.

§ 305.91-8 Adjudication of Civil Penalties Under the Federal Aviation Act (Recommendation No. 91-8).

The Federal Aviation Administration is currently operating a demonstration civil penalty program under which the FAA may impose monetary penalties of up to \$50,000 for violations of the Federal Aviation Act or its regulations. Under the program, the FAA prosecutes violations, proposing initial civil money penalties according to the discretion of the prosecuting FAA official. The persons on whom the penalties would be imposed, usually pilots, air carriers, mechanics, or airport operators, are entitled to an administrative hearing before an administrative law judge at

the Department of Transportation, followed by the right to an administrative appeal to the administrator of the FAA. Judicial review is available in the federal courts of appeals.

Before the demonstration civil penalty program was enacted in 1987, the FAA could propose civil money penalties, but such penalties could be imposed only through a civil action brought in a United States District Court through Justice Department attorneys.

The Federal Aviation Act also provides that violations of the Act or the regulations may result in suspensions or revocations of certificates of pilots, mechanics or air carriers. These cases follow a different administrative path. While "certificate actions" begin with a prosecutorial decision made by an FAA official, exercising the right to a hearing takes the case to the National Transportation Safety Board, an independent agency. If a hearing is requested, an NTSB ALJ holds the hearing, with a right to appeal to the Board. Judicial review is available in the federal courts of appeals.

In 1990, the Administrative Conference of the United States, in Recommendation 90-1, "Civil Money Penalties for Federal Aviation Violations," recommended that the FAA administrative civil money penalty program be made permanent, that the \$50,000 ceiling on administratively-imposed penalties be eliminated, and that the responsibility for adjudication be studied further. In response to the Conference's Recommendation 90-1, Congress extended the program for an additional two years. In that legislation, Public Law 101-370, Congress expressly asked the Conference to study and make a recommendation on the issue of "whether the authority to adjudicate administrative complaints under the Federal Aviation Act of 1958 should remain with the Department of Transportation, should be transferred to the NTSB, or should be otherwise modified."

Discussion

Preliminarily, the Conference reiterates its previous recommendation that the civil money penalty program be made permanent and that the \$50,000 ceiling on administratively-imposed penalties be removed.

The issues relating to how civil penalties should be adjudicated in the context of this program are controversial. There is no objectively correct resolution; nor do administrative law principles clearly lead to any single solution. Among the various (and not

easily resolvable) concerns that arise in this context are:

—The regulated community has concerns about the fairness of FAA's administration of the civil money penalty program, resulting from the fact that appeals of civil penalty cases are heard by the FAA Administrator. The consultant's study, however, found no evidence of actual unfairness or mishandling of cases resulting from commingling prosecutorial and judging functions under the present system.

—The FAA is distinctive in its exercise of operational responsibility for the air traffic control system, which makes it a co-actor with persons or entities subject to its regulatory jurisdiction. The consultant's report noted a continuing perception that there is a conflict of interest between FAA as final adjudicator and its role as overseer of the air traffic control system.

—There is concern that cases based on similar facts being heard in two different agencies could have the potential for inconsistent standards and lead to forum shopping between the FAA civil money penalty program and the NTSB certificate revocation remedy.

—The FAA Administrator, as the Secretary of Transportation's delegate, is the chief policy maker in the area of air safety, and is charged with the responsibility for the safety of the national aviation system. The Administrator therefore has a legitimate interest in having some control over a related enforcement program.

—The NTSB, in its role of recommending air safety improvements, benefits from its review of enforcement cases, as an opportunity to learn about potential safety problems in a context other than an accident investigation.

The best resolution of the controversies associated with civil penalty adjudication authority would be a consensual one, satisfying the legitimate concerns of the FAA and the reasonable needs of all of the affected interests.¹ The Conference encourages

¹ The Conference held a public hearing on Wednesday, June 19, 1991, to provide interested parties with the opportunity to present their views on these issues. 56 Fed. Reg. 22693 (May 16, 1991) (notice of Conference Committee on Adjudication public hearing). After the Conference consultant released his draft report, he convened an informal meeting with affected parties to explore the feasibility of a solution to the controversy that accommodates the reasonable needs of all of the affected interests. Participants in that meeting agreed that informal consultation was desirable and the consultant met further with representatives of the affected interests to discuss alternatives. While no overall resolution was agreed to, the willingness to seek common ground was enhanced.

the FAA Administrator and the NTSB Chairman to convene and jointly host a conference with representatives of affected public and private interests to consider negotiating solutions for allocating adjudicatory authority over the civil money penalty and certificate revocation and suspension programs. The Administrative Conference is available to assist as appropriate. If such a mutually agreeable resolution is developed in the future, the Conference's Committee on Adjudication is available to provide comments to Congress on the proposed solution.

Because the success of an aviation safety program ultimately rests on voluntary compliance, improving the relationships among the regulated communities, public representatives and the government agencies is crucial. Representatives of the FAA and NTSB indicate that the relationship between the two agencies is a cooperative one. To further this cooperative spirit, the Conference recommends that, in addition to meeting to discuss the specific issues of allocating adjudicatory authority for the civil money penalty and certificate programs, the FAA and NTSB should encourage long-term proposals for ways to enhance compliance and enforcement of the Act, through discussions and communication with the regulated community and the traveling public.

In the absence of a consensual resolution on the issue of where adjudicatory authority for FAA enforcement cases should reside, the Conference recommends that adjudicatory authority over a small percentage of selected civil money penalty cases (those involving pilots and flight engineers) be transferred to the NTSB. This recommended solution would address several problems. It would locate both civil money penalty and certificate authority for these cases in one forum, eliminating the potential for forum shopping as to pilots and flight engineers. It would eliminate perceived conflicts of interest as to those classes of cases in which conflict is most likely between FAA employees with operational responsibility for air traffic control and persons subject to civil penalty authority (i.e., pilots and flight engineers). While the unitary enforcement (rather than the split enforcement) model is used in almost all administrative civil money penalty programs, the FAA's distinctive role in administering the air traffic control system is a sufficiently special characteristic to provide plausible justification for recommending this

limited expansion of the existing split-enforcement model in this context.

This recommendation to use a split-enforcement model in this particular situation is not to be read as a general endorsement of this model for other government programs. Rather, it reflects the specific circumstances involved here, including the fact that the split-enforcement model is already in use in certificate cases, and that the FAA has a significant operational role in air traffic control that may result in potential conflicts of interest in cases involving pilots or flight engineers.

Removing pilot and flight engineer cases from the FAA also conflicts the least with comprehensive exercise of FAA safety policy authority, given the individual character of most violations involved in these cases. Conversely, retaining civil penalty authority at the FAA for nonpilot and nonengineer cases, which constitute more than 75 percent of the civil money penalty cases, presents less potential for conflict between respondent interests and the FAA's air traffic control responsibility. There is also greater likelihood that the problems exposed by civil penalty actions in air carrier, airport security and hazardous materials cases are more systemic in nature.

For those cases within the Board's authority, the Conference is making additional recommendations. First, because a split-enforcement model involves one agency ruling on the actions of another, the Act should address the issue of the appropriate level of deference that should be given in enforcement cases to the FAA's interpretations of its rules. The Conference recommends that validly adopted FAA interpretations of FAA regulations be deferred to, unless such interpretations are arbitrary, capricious or not in accordance with law. This recommendation is consistent with Recommendation 86-4, "The Split-Enforcement Model for Agency Enforcement." See also *Martin v. Occupational Safety and Health Review Commission*, ___ U.S. ___, 111 S. Ct. 1171 (1991). This does not, however, mean that NTSB should simply defer to litigation positions of the FAA prosecutor. Id. at 1179. In addition, the FAA should be given the authority to appeal to the Board from adverse NTSB decisions at the administrative law judge level and to seek judicial review in the appropriate court of appeals from decisions of the Board. The FAA is still the chief policy making agency in the area of aviation safety, and should have the ability to challenge decisions it

believes are inconsistent with those policies.

The merger of sanction authority over pilots and flight engineers in one forum should provide the NTSB with increased flexibility to select the appropriate sanction from the range of available sanctions. However, such flexibility must operate within the bounds of FAA's validly adopted standards and criteria for sanctions. Such criteria may, as with all rules, be adopted through the appropriate rulemaking procedures or through adjudications.² In addition, a potential respondent must be on notice of the range of potential sanctions for which he or she potentially would be liable.

The Conference also encourages greater use of a variety of dispute resolution techniques in individual cases. The Administrative Dispute Resolution Act, Public Law No. 101-552, encourages agencies to use such techniques where appropriate. The growing body of alternative dispute resolution literature supports the view that efficiency gains for everyone are available from flexible means of resolving disputes. Such flexibility might be useful in a variety of contexts in civil money penalty and certificate cases. The Conference specifically recommends consideration of the utility of settlement judge procedures.³

Recommendation

1. Congress should make permanent the civil money penalty program for violations of the Federal Aviation Act (the Act) and eliminate the \$50,000 ceiling on administratively-imposed penalties.⁴
2. The question of where adjudicatory authority over certification and civil money penalty proceedings under the Act should be placed raises complicated policy as well as legal issues. Principles of administrative law provide no single clear answer. The Federal Aviation Administration Administrator and the Chairman of the National Transportation Safety Board jointly should convene a conference with representatives of affected interests to consider possible consensual arrangements for allocating adjudicatory authority over the civil money penalty and certificate suspension and revocation programs.

² See *SEC v. Chenery*, 332 U.S. 194 (1947); *NLRB v. Bell Aerospace Co.*, 416 U.S. 287 (1974).

³ See Conference Recommendations 88-5, "Agency Use of Settlement Judges," 1 CFR § 305.88-5 (1991).

⁴ See ACUS Recommendation 90-1, "Civil Money Penalties for Federal Aviation Safety Violations," 1 CFR § 305.90-1 (1991).

The FAA and the NTSB should also encourage long-term proposals for enhancing compliance and enforcement of the Act, and for changing the procedures to achieve the Act's objectives.

3. In the absence of consensus by the affected agencies and interests as to where the Act's certification and civil money penalty proceedings should be adjudicated, Congress should amend the Act consistent with the following recommendations:

A. Authority for adjudicating civil money penalties against pilots and flight engineers should be transferred from the FAA to the NTSB, with all other civil penalty adjudication authority remaining at the FAA. This recommendation is contingent on Congress' transfer of necessary budgetary resources for this purpose to the NTSB.

B. The Act should provide that, for purposes of review of FAA enforcement actions, courts and the NTSB should defer to validly adopted FAA interpretations of its statutes and regulations, unless it is shown that such interpretations are arbitrary, capricious, or otherwise not in accordance with the law.⁵

C. The FAA should be given the right to appeal an NTSB administrative law judge decision to the Board, and to seek judicial review of a decision of the Board in the appropriate court of appeals.

This recommendation is directed only to this specific program and the special circumstances involved, and should not be read as implying any views as to the merits, generally, of the "split enforcement" model as compared to the "unitary agency" model of adjudication in other government programs.

4. In an NTSB adjudication under the Act, the range of possible sanctions for violations of the Act should include certificate revocation, certificate suspension and/or a monetary penalty, as found by the NTSB to be appropriate and consistent with rules validly adopted by the FAA with respect to applicable standards or criteria for the imposition of sanctions. Notice of possible sanctions, as well as those proposed by the FAA in a particular enforcement matter, should be provided to the respondent upon the institution of the proceeding. The selected sanction(s) should be set forth in the ALJ's initial or

recommended decision, together with the bases therefor, including a reference to any applicable FAA standard or criterion for the imposition of sanctions.

5. NTSB and FAA adjudicators, as well as FAA prosecutors, should place greater emphasis on alternative dispute resolution in individual cases. In particular, the FAA and NTSB, to the extent each has adjudicatory responsibility, should consider Recommendation 88-5, "Agency Use of Settlement Judges," and make greater use of the techniques described there.

§ 305.91-9 Specialized Review of Administrative Action (Recommendation No. 91-9).

In recent years, there has been much talk of a crisis in the federal courts. In response, Congress empaneled the Federal Courts Study Committee, charging it with responsibility to examine the problems facing the courts and to develop a long-range plan for addressing them. The Committee issued its report in April 1990, touching on many different aspects of the problem, among them those related to judicial review of administrative action.

The Federal Courts Study Committee specifically rejected a proposal to divert all administrative appeals to a specialized court within the Article III judiciary. The Committee recognized that administrative review cases do not form a major percentage of the caseload of the federal courts of appeals. Yet assigning jurisdiction to a specialized court may provide more efficient or effective review for some types of administrative cases. It, therefore, proposed diversion of some cases now in the Article III courts to other adjudicatory bodies; in particular, the Committee recommended creation of an Article I court to review Social Security disability claims and perhaps, eventually, other administrative benefit claims.

Finding the optimal structure for review of administrative cases involves a complex balancing of various factors: the need for uniform law versus the benefits of "percolation" in the decentralized circuits; the value of expert decisionmakers versus the broader perspective of generalists; the efficiency of specialization versus the risk of bias that specialization entails. And the calculation can vary in the context of different administrative programs, which differ in the volume, complexity, and level of technical content of the caseloads they generate. For these reasons, the Conference, like the Federal Courts Study Committee, opposes allocating review of all administrative cases to a single

specialized court, whether inside or outside the Article III system.

Should Congress consider the creation of specialized courts for review of particular administrative programs, this recommendation sets forth criteria for Congress to take into account in determining when to create specialized courts and how to structure them to enhance their effectiveness. Certain characteristics held in common by many federal regulatory and benefit programs raise particular problems within the existing system of judicial review. Uniformity in decisionmaking can be especially important in the context of administrative action under national programs. The agencies themselves are structured hierarchically, so as to speak with a single voice in applying law and policy to individual circumstances. But the federal court system that reviews these agency programs is decentralized, and different circuits often reach different outcomes on the same issue. The Supreme Court's capacity to resolve these conflicts is severely limited by the modest number of administrative law cases it considers each year. As a result, agencies often face the choice of refusing to acquiesce in decisions below the Supreme Court level, abandoning policy positions they believe to be correct, or implementing programs differently in different regions (and, consequently, treating similarly situated individuals or entities differently and encouraging forum shopping).

Another special aspect shared by some federal regulatory programs is that they involve complex technical or scientific issues, which may present great challenges to reviewing courts without special expertise in the relevant areas. Cases on review of agency rulemaking and ratemaking actions, in particular, frequently involve lengthy administrative records filled with conflicting material on technical issues of fact and policy; the judges must devote extra time to poring over these records and to producing the longer opinions these cases often engender.

Other federal programs (such as individual benefit programs) produce masses of litigation involving primarily questions of specific fact. Resolution of these issues may be an inefficient allocation of the time of the federal courts.

While review by specialized courts may offer a solution for these problems, specialization brings dangers as well. One premise of the national system of courts of general jurisdiction is that sound decisionmaking results from exposure to a wide range of problems and issues; adjudicative bodies with

⁵ See ACUS Recommendation 86-4, "The Split-Enforcement Model for Agency Enforcement," 1 CFR 305.86-4 (1991). See also *Martin v. GSHRC*, ___ U.S. ___, 111 S. Ct. 1171 (1991). This Recommendation should not be read to suggest that deference should automatically be given to FAA prosecutors' litigation positions. *Id.* at 1179.

limited subject matter jurisdiction may lack this generalist perspective. Specialization can also produce bias problems of two kinds: the appointments process may be distorted as interest group pressures lead to the selection and confirmation of nominees for their views on specific issues; in addition, the standard of review may be distorted, either because expertise leads the court to substitute its judgment for that of the agency or because familiarity with a particular agency leads the court to accept the agency's positions too readily. Public perception that a court is biased can reduce its effectiveness even when actual bias is not present. Finally, a specialized court may suffer reduced prestige if its repetitive subject matter attracts lower caliber judges.

The recommendations that follow offer guidance to Congress on the considerations it should take into account when it deliberates about whether to assign responsibility for review to a specialized court; they should be read as a whole. Thus, for example, the criteria in recommendation 2 may suggest assignment of Social Security disability cases to a specialized court; if Congress considers such an approach, however, it should take into account recommendations 3(B) and 3(C), favoring a balanced docket and a jurisdictional mix. These recommendations are intended to complement Conference Recommendation 75-3, "The Choice of Forum for Judicial Review of Administrative Action," 1 CFR 305.75-3 (1990), which the Conference continues to believe should form the foundation for decisionmaking about the appropriate forum for judicial review of administrative action within the Article III courts.

Recommendation

1. When considering proposals for the creation of a specialized court or courts to review administrative action, Congress should take into account that federal agency programs vary greatly in the volume, complexity, and level of technical content of the caseloads they generate, and, thus, any solutions adopted should be designed to fit the specific administrative programs to which they will apply. For these reasons, among others, the Conference opposes the creation or designation of a single specialized court, either within the Article III judiciary or under Article I, to handle review of all administrative cases.

2. Congress should recognize that it is appropriate to create specialized courts for particular administrative programs

only if such programs are characterized by the following:

A. A program area in which one might reasonably expect a consistently large volume of cases, diversion of which might significantly alleviate burdens on the generalist federal courts;

B. The predominance of factual issues specific to particular cases, or the predominance of scientific or other technical issues requiring special expertise of decisionmakers; and

C. The particular importance of uniformity in agency administration of a program.

3. If Congress creates specialized courts to review particular administrative programs, it should, to the extent possible, structure the courts as follows:

A. To minimize jurisdictional uncertainty, the subject matter before the courts should be segregable from other claims.

B. To ensure that the courts maintain a balanced perspective on the issues before them, the courts' dockets should be designed to expose judges to all sides of pertinent controversies and to the broadest possible scope of related issues within a field of law.

C. To encourage generalist judicial appointments, to minimize distortion of the standard of review resulting from loss of the generalist perspective, and to avoid the fact or appearance of capture by special interests, the courts' subject matter jurisdiction should be diverse.

If the court provides the final stage of judicial review before Supreme Court review, satisfaction of criterion C is essential.

4. If Congress creates specialized courts to review particular administrative programs, it should provide for periodic evaluation of those courts to determine whether there is a continuing need for specialized review.

5. In any legislation providing for specialized review of particular administrative programs, Congress should assign to each court or reviewing body the type of functions it is best suited to perform and should minimize duplication of review functions. In particular, any such legislation should:

A. Avoid *de novo* review of factual issues already subject to formal adjudication at the agency.

B. Make the decisions of specialized courts final on review of questions of fact specific to the case (including the sufficiency of the evidence in that case by whatever standard it is reviewed).

C. When review has been assigned to an Article I specialized court, provide a subsequent layer of judicial review by an Article III court for questions of

constitutional or statutory interpretation.

§ 305.91-10 Administrative Procedures Used in Antidumping and Countervailing Duty Cases (Recommendation No. 91-10).

This recommendation discusses several possible reforms of the administrative procedures used in U.S. antidumping (AD) and countervailing duty (CVD) cases. These cases usually arise when a petition is filed on behalf of a U.S. industry by one of several statutorily specified interested parties asking the U.S. Government to impose special duties to offset dumping or subsidization. The Government itself can also initiate cases.

Dumping occurs when foreign companies export goods to the United States for sale at less than their "fair value." Fair value is generally based on the exporter's prices for such goods in its home (or a third country) market or on its cost of producing the goods (including a profit margin). AD duties are imposed to offset the margin of dumping (i.e., the difference between the foreign market value and the U.S. price) if the U.S. industry producing like goods has suffered or is threatened with material injury by reason of the dumped imports, or if the establishment of a U.S. industry producing such goods has been materially retarded.

Countervailing duties may be imposed on goods exported to the United States that benefit from certain types of subsidies granted by a foreign government. In most CVD cases, duties may be imposed only if the U.S. industry producing like goods has suffered or is threatened with material injury by reason of the dumped imports, or if the establishment of a U.S. industry producing such goods has been materially retarded.

The decision whether dumping or subsidization has occurred is made by the International Trade Administration (ITA) of the Department of Commerce; the decision on injury is made by the U.S. International Trade Commission (ITC). These administrative decisions are subject to review, in the first instance, in the Court of International Trade, and then in the Court of Appeals for the Federal Circuit. In the case of Canadian exports, the decisions may be "appealed" instead to a binational panel established under the U.S.-Canada Free Trade Agreement.

In recent years, the use by the United States and other countries of AD and CVD laws has been controversial. While many of the complaints about these laws are essentially about their substantive provisions, a number of the

complaints concern procedural matters. In particular, some critics have contended that the high cost of defending these cases, which are often quite complex proceedings involving the collection and analysis of vast amounts of data and which often continue for years, amounts to a new form of protectionism—process or procedural protectionism. At the same time, U.S. domestic producers complain that the great expense of invoking these laws virtually precludes their use by some petitioners deserving of relief.

The two concerns that seem to be foremost in the minds of trade law practitioners are reducing the time and expense associated with AD and CVD proceedings and improving the decisionmaking process under the relevant statutes. The Conference notes, at the outset, that the complex procedures for AD and CVD cases, involving a division of responsibilities between two agencies with appeals to a specialized court and then to a federal court of appeals, may contribute to the time and expense associated with these proceedings. The Conference recommends in Part A that Congress authorize and fund a study of the agency structures and judicial review for AD and CVD cases. Recommendations B, C and D are intended to address problems arising under the current structure.¹

The ITA and ITC both view AD/CVD proceedings as investigative rather than adjudicatory. Nonetheless, given the conflicting positions of the parties before the agencies—the domestic industry versus the foreign exporters—and their role in supplying much of the information on which the agency decisions are based, the parties do and should play an important part in the process. That part could be made more useful if hearings at which the factual submissions of the two sides are tested could be conducted more effectively than at present.

In the case of the ITA, the hearing officer typically does not participate in the hearing or engage in interchanges

with counsel. The ITA hearing process would be improved if the hearing officer were more knowledgeable about the contested issues and participated more actively in interchanges with counsel than is presently the case.

In the case of the ITC, hearing times for cases are standardized and somewhat inflexible, even though cases vary widely in complexity and number of parties, with the result that in some cases parties have only a few minutes for oral presentations. Testing of factual information at the hearing is limited by practices that discourage cross-examination of witnesses. The ITC hearing process would be improved if, in setting the times for oral presentations, the ITC took into account factors such as the complexity of the case and the number of parties involved. The ITC should also allow reasonable time for cross-examination without subtracting such time from the questioner's time for affirmative presentation.

Several changes could be made to simplify ITA administrative procedures and reduce somewhat the time and expense associated with AD/CVD cases. First, preparing the administrative record more promptly would speed up the appeals of cases. Second, streamlining and standardizing the ITA's procedures for handling routine requests for access to information would reduce the amount of time spent by the parties in preparing such requests, thereby reducing costs. The ITA should also strive to reduce parties' costs by reducing where possible the number of copies of documents required to be filed.

Third, the ITA now sometimes decides to reject a party's factual submissions or to change significantly its methodology for calculating dumping/subsidy margins without notice to the parties. It would be desirable for the ITA to notify the parties when it makes such a decision, so that the parties will not continue to prepare their cases on the assumption that the agency has not taken such actions. Implementation of this recommendation would allow parties to argue their positions more effectively and avoid wasted effort. This recommendation is not intended to suggest that the ITA does not have the right to reject a party's evidentiary submissions, or that a party should have any new rights to more time to comply with ITA information requests or to object to methodology changes. The ITA should also consider whether there are methods within the statutory time

constraints to permit parties to comment in response to substantial changes in methodology.

Fourth, at present there are a number of inconsistencies between the way that the ITA's investigations office (which handles the initial investigation to determine whether a AD/CVD order should be issued) and the ITA's compliance office (which reviews shipments made after the issuance of an AD/CVD order to assess the amount of duties owing) handle certain issues. The ITA ought to eliminate those inconsistencies for which there is no justification.

Fifth, under U.S. law the actual amount of AD/CVD duties owed is usually determined after the fact. Exporters deposit an estimated duty when goods are imported into the United States, and that amount may be adjusted upwards or downwards as a result of an annual review, if requested. (If not requested by anyone, the estimated duties are considered to have been collected as the final duties.) The ITA has traditionally had a large backlog of annual reviews, although the backlog has been reduced in recent years, and reduced substantially in recent months. The delay in finally determining duties owed is unnecessarily disruptive to trade flows and unfair to the parties to such cases. Accordingly, the ITA should continue its efforts to eliminate its backlog of annual reviews.

The Commissioners of the ITC apparently do not normally meet as a group to discuss their views of a case before their formal deliberations, evidently because of concerns stemming from the Government in the Sunshine Act. It appears that the Commission's reluctance to meet as a group adversely affects the ITC decisionmaking process. The Commission's general counsel has taken the position that its meetings to dispose of AD/CVD cases are not within the terms of exemption 10 of the Act, which exempts meetings involving determinations "on the record after opportunity for a hearing." Some practitioners, however, believe that exemption 10 applies, and the Commission should decide whether such meetings do or should come within the ambit of exemption 10. If the Commission concludes that the meetings in question are not in fact exempted from the Sunshine Act, then Congress should consider exempting such

¹ In 1973, the Administrative Conference recommended a number of reforms in the then existing procedures for administering AD cases. See Conference Recommendation 73-4, Administration of the Antidumping Law by the Department of the Treasury, 39 FR 4846 (1974). In 1984, it recommended reform of one narrow aspect of AD and CVD procedures—the availability of confidential information under protective order in ITC proceedings. See Conference Recommendation 84-6, Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings, 1 CFR 305.84-6 (1991).

meetings for AD/CVD cases from the Act. As an interim measure for achieving the benefits of collegial decisionmaking, the ITC should take steps to exchange drafts, views and other information among the commissioners before entering into formal deliberations.

Recommendation

A. Congressional Study

The Congress should authorize and fund a study, by the Administrative Conference or another appropriate agency, of the agency structures for handling AD/CVD cases. The study should address whether responsibility for these cases should continue to be divided between the ITA and the ITC. It should also consider whether the usual procedure for judicial review of agency adjudications should be followed for AD/CVD cases by providing for direct appeals from the ITA and/or ITC to the Court of Appeals for the Federal Circuit, or whether the additional level of specialized court review at the Court of International Trade is required in these cases.²

B. Improved Agency Factfinding Procedures

The ITA and the ITC should develop factfinding procedures that improve development of the administrative record, with increased opportunities for the parties and decisionmakers to test the factual submissions made in the proceedings.

1. ITA Procedures

To accomplish this goal, the hearing conducted by the ITA at the end of its investigation should be presided over by a senior official, with adequate staff support, who is knowledgeable about the contested issues in the proceeding and who actively participates in interchanges with counsel for the parties. Where appropriate, the hearing officer should make a recommendation with regard to the issues raised in the hearing.

2. ITC Procedures

To accomplish this goal, the ITC should provide adequate time for oral presentations, taking into account factors, such as multiple parties or countries under investigation, that may justify more time than normally allowed. The ITC should allow reasonable time

for cross-examination in appropriate cases without reducing the cross-examiner's time for affirmative presentation at the hearing.

C. ITA Administrative Reforms

To improve the efficiency of case processing, the ITA should adopt the following reforms:

1. To speed judicial review, the ITA should complete the record in individual cases and make that record available to parties promptly.

2. The ITA should streamline its handling of applications for release of information under administrative protective orders and of requests for access to computerized information. It should also require that only a reasonable number of copies of documents be submitted by parties.

3. The ITA should give notice to parties before it (a) rejects portions of parties' evidentiary submissions or (b) adopts significant changes in methodology on which the parties have not had an opportunity to comment. The ITA should also consider whether there are techniques within the statutory time constraints to permit parties to comment in response to substantial changes in methodology.

4. The ITA should eliminate unjustified inconsistencies in the practices and policies of its investigations and compliance offices.

5. The ITA should continue its efforts to eliminate its backlog of annual reviews of the actual duties owed by specific companies subject to AD/CVD orders.

D. The ITC and the Government in the Sunshine Act

To encourage collegial decisionmaking, the ITC should exchange drafts, views and other information before entering into formal deliberations. The Commission should decide whether informal meetings to discuss the disposition of AD/CVD cases constitute meetings exempt from the Sunshine Act under exemption 10. If the Commission determines that such meetings are subject to the Sunshine Act, then Congress should consider amending the Tariff Act to provide that the Sunshine Act does not apply to informal meetings held to discuss the disposition of AD/CVD cases.

Dated: December 24, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-31124 Filed 12-27-91, 8:45 am]

BILLING CODE 9110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-91-401]

Potatoes Grown in Oregon-California; Revision in Pack and Safeguard Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) revising the pack requirements established for potatoes packed in 50-pound cartons to conform to recent changes in the U.S. Standards for Grades of Potatoes (Standards) and eliminating reporting requirements for potatoes shipped between districts within the production area for grading or storage. These changes will promote consistency in potato packing practices and should reduce handling costs.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 720-3610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of potatoes grown in Oregon and California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about

² The Administrative Conference has generally recommended that appeals from administrative agencies should be to the courts of appeals. See Conference Recommendation 75-3, The Choice of Forum for Judicial Review of Administrative Action, 1 CFR 305.75-3 [1991].

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order and approximately 470 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of the Oregon-California producers and handlers may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in 7 CFR 947.340 (53 FR 2996, February 3, 1988, as amended at 53 FR 49114, December 6, 1988, and 54 FR 46718, November 7, 1989). Current requirements include a minimum grade of U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes in other containers. Potatoes shipped to points within the continental United States are required to be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export destinations must be at least 1½ inches in diameter. Red-skinned potatoes may be shipped without regard to a minimum size requirements if they otherwise grade at least U.S. No. 1. Non-red-skinned potatoes that are 1½ inches or less in diameter may be shipped if they grade at least U.S. No. 1, and are packed in containers of at least 50 pounds. Also included in the handling regulation are safeguard procedures for potatoes shipped to authorized exempt outlets, which are not required to meet the established quality and size requirements.

An interim final rule was issued on October 25, 1991, and was published in the *Federal Register* on October 31, 1991 [56 FR 55984]. The rule revised the pack requirements established for potatoes packed in 50-pound cartons and eliminated reporting requirements for potatoes shipped between districts within the production area for grading or storage. The interim rule provided that interested persons could file written comments through December 2, 1991. No comments were filed.

At a meeting held on June 13, 1991, the Oregon-California Potato Committee (committee), the agency responsible for local administration of the marketing order, unanimously recommended changes in the existing pack and safeguard requirements.

Potatoes packed in 50-pound cartons are required to grade at least U.S. No. 1, except that an additional tolerance is provided for hollow heart and internal discoloration.

Effective March 27, 1991, the United States Standards for Grades of Potatoes (7 CFR 51.1540-1566; 56 FR 7553, February 25, 1991) were revised to change the method for scoring hollow heart and internal discoloration. The Standards were revised to provide that hollow heart and certain other internal defects be scored based on specific diameter measurements rather than a method which scored these defects if they affected the appearance of the potato. For example, a potato was previously defined as damaged from hollow heart if the defect materially detracted from the internal appearance of the potato. Now hollow heart damage exists if the area affected is equal to or less than that of a circle ½ inch in diameter on a 6 ounce potato, with correspondingly greater or lesser amounts permitted on larger or smaller potatoes.

Under the previous Standards, photographs were used by inspectors as a guide to determine the extent of damage due to hollow heart and hollow heart discoloration. The marketing order regulation referenced these photographs. However, pursuant to the March 27, 1991, revision to the Standards, hollow heart and/or discoloration are scored based upon diameter. The committee therefore recommended deleting references to these photographs in the regulations. Although the method of scoring these defects has changed, the tolerance permitted under the handling regulation remains the same.

The committee believes that revising the method of scoring hollow heart and discoloration permitted under the handling regulation to conform to the revised Standards will promote more uniform trading practices in the potato industry and improve the consistency of inspection. Therefore, to assure that Oregon-California potatoes are packed and sold on the same basis as potatoes produced in other producing areas, it is necessary to amend the Oregon-California potato handling regulation accordingly.

The committee also unanimously recommended revising the safeguard requirements that apply to potatoes shipped to certain outlets free from grade, size, and inspection requirements. Before the interim final rule went into effect on October 31, handlers who wished to ship their potatoes to other districts within the production area for grading or storage had to apply for a

Certificate of Privilege and report all such shipments on Special Purpose Shipment Report forms.

These safeguard requirements did not apply to shipments of potatoes between Districts 2 and 4. District 2 consists of four counties in southern Oregon, and District 4 is comprised of the two northern California counties included in the production area. Historically, movement of potatoes between these two adjacent districts for grading and storage has been common, while such movement between other districts has been limited. Recently, however, there has been increasing handler interest in packing potatoes grown in a district other than that in which the handler is located. Packing potatoes grown in other districts provides handlers with more flexibility in terms of varieties available and the timing of supplies.

The committee reports that allowing shipments between Districts 2 and 4 without regard to the safeguard requirements has been successful, in that shipments of ungraded or substandard potatoes have not been diverted to fresh market channels. Additionally, similar marketing order programs (e.g., that covering potatoes grown in the State of Washington) have operated effectively without regulating the movement of potatoes within the production area for purposes of grading or storage. The committee has therefore concluded that eliminating these safeguard provisions will not adversely affect program operations. Eliminating these requirements should reduce handling costs by eliminating unnecessary reporting requirements.

A conforming change is being made in § 947.132 "Reports" to eliminate reporting requirements pertaining to shipments for grading or storage.

The committee believes this action to eliminate safeguard requirements will result in reduced handler costs and more equitable treatment of handlers throughout the production area. It will also eliminate reporting requirements that are no longer necessary, while maintaining the quality of potatoes shipped to fresh market outlets.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this final rule were approved by the Office of Management and Budget (OMB), and have been assigned OMB No. 0581-0112.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is hereby amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: These sections will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 947 which was published at 56 FR 55984 on October 31, 1991, is adopted as a final rule without change.

Dated: December 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–31037 Filed 12–27–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 971

[Docket No. FV–91–424]

Suspension of Container, Pack, Packing Holiday, Inspection and Certain Reporting Requirements Under Marketing Order No. 971 for Lettuce Grown in Lower Rio Grande Valley in South Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) which suspends for the 1991–92 season the container, pack, packing holiday, inspection, and certain reporting requirements currently in effect under Federal Marketing Order No. 971, regulating the handling of lettuce grown in South Texas. It has been determined that these regulations are not necessary during the upcoming season because it

is anticipated that there will be only one person producing and handling South Texas lettuce.

EFFECTIVE DATE: January 29, 1992 through October 31, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 690–4244.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 144 and Order No. 971 (7 CFR part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. Last season, there were 11 handlers and 20 producers of South Texas lettuce, and the majority could be classified as small entities. It is anticipated that there will be only one entity producing and marketing lettuce in the production area during the 1991–92 season.

An interim final rule was issued on October 25, 1991, and was published in the *Federal Register* on October 31, 1991 (56 FR 55986). The rule suspended for the 1991–92 season the container, pack, packing holiday, inspection, and certain reporting requirements currently in

effect under the order. The interim rule provided that interested persons could file written comments through December 2, 1991. No comments were filed.

The South Texas Lettuce Committee (committee), the agency responsible for local administration of the order, met on May 29, 1991, and unanimously recommended that the handling regulations currently in effect under the marketing order be suspended for the 1991–92 lettuce season. These regulations, in effect from November 15 each year through the following March 31, specify the dimensions of the containers that may be used in shipping lettuce and the number of heads of lettuce that may be packed per container. Lettuce is required to be inspected, and no person may package lettuce on any Sunday or on Christmas Day. Certain reporting requirements are necessary for handlers who ship lettuce for relief, charity and experimental purposes.

The committee's recommendation to suspend these handling requirements for the upcoming season was based largely on the fact that there is only one entity expected to produce and handle lettuce this year. The regulations have therefore been deemed to be unnecessary.

Marketing Order No. 971 has been in effect since 1960. The order includes authority to specify the grade, size, quality, and quantity of lettuce which may be shipped during any period, as well as packing holiday, pack, container, inspection, and reporting requirements. Briefly used, the quantity restrictions were found to be impractical. Quality requirements were imposed until 1971, but such requirements were frequently found to be difficult to meet because of the variable weather in the production area. Since 1971, only packing holiday, pack container, and inspection authorities have been used.

The order was initially implemented to provide the industry with a means of dealing with volatility in South Texas lettuce prices due to fluctuations in the quality and quantity of lettuce marketed. Each year, the amount of lettuce acreage planted reflected prices received in the preceding season, so that high season-average prices resulted in increased plantings the following season. The marketing order, with its quality and volume control provisions, was looked upon as a mechanism to help producers and handlers manage supply and to maintain industry grade acceptance by improving quality.

Since the order became effective, South Texas lettuce production has declined. While shipment levels and the number of producers and handlers have

fluctuated, there has been a downward trend in all three. During the first year the South Texas lettuce marketing order was in effect, there were 31 handlers and 68 producers who produced 1,793,500 cartons of lettuce from 6,842 acres. During the 1990-91 marketing season, there were 11 handlers and 20 producers who produced 90,427 cartons of lettuce from 2,625 acres. It is expected that there will only be one lettuce producer and handler this season. In addition, market share for South Texas lettuce has declined when compared to other lettuce producing areas, mainly California and Arizona.

Section 971.52(d) of the marketing order provides that regulations issued under the order may be suspended whenever such action is warranted upon recommendation of the committee or other available information. In view of the above information, particularly the fact that there will only be a single lettuce producer and handler, it has been determined that the pack, packing holiday, container, and inspection requirements established for South Texas lettuce are not necessary during the 1991-92 season.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements under the marketing order and the applicable handling regulation have been approved by the Office of Management and Budget. The handling regulation, under special purpose shipments, provides that handlers shipping lettuce for relief, charity, and experimental purposes are exempt from assessment, container, pack, and inspection requirements if such handler presents a Certificate of Privilege. Each handler of lettuce shipping under a Certificate of Privilege must supply the committee with reports, as requested by the committee, showing the name and address of the shipper, car or truck identification, loading point, destination, or any other information deemed necessary by the committee. Since this rule suspends container, pack, and inspection requirements currently in effect for shipments of South Texas lettuce for the 1991-92 season, it has been determined that the reporting requirements under the handling regulation applicable to special purpose shipments are also not necessary during the 1991-92 season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations

submitted by the committee and other available information, it is hereby found that the rule, as hereinafter set forth, will tend to be effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements, Reporting and recordkeeping requirements.

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: These sections will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 971 which was published at 56 FR 55986 on October 31, 1991, is adopted as a final rule without change.

Dated: December 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-31036 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

[FV-91-428FR]

Raisins Produced From Grapes Grown in California; Revision of the Substandard Dockage System for All Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification, as a final rule the provisions of an interim final rule which eliminated for a period of one year the upper limit for substandard raisins in lots of raisins of all varietal types under the marketing order covering raisins produced from grapes grown in California. This action is needed because a relatively high percentage of the 1991-92 crop would not have met the previously established upper limit for the amount of substandard raisins allowed in lots of standard raisins. This revision was unanimously recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the order. The purpose of this action is to reduce the number of lots of raisins

returned by handlers to producers or reconditioned by handlers at the producers' expense.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT:

E. Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. A majority of raisin producers and a minority of raisin handlers may be classified as small entities.

This final rule adopts, without change, the provisions of an interim final rule that revised a portion of the supplementary regulations of the raisin marketing order. This action was

unanimously recommended by the RAC at its August 15, 1991, meeting.

Prior to the interim final rule becoming effective, the marketing order regulations provided that handlers could acquire under an agreement with a producer, any lot of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contained from 5.1 percent to 10.0 percent, by weight, of substandard raisins under a weight dockage system. A handler could also acquire, subject to prior agreement, standard raisins of any lot of Muscat (including other raisins with seeds), Sultan, and Zante currant raisins containing from 12.1 percent to 17.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired by handlers under the substandard dockage system was obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factors in the dockage tables in § 989.212. These factors reduced the weight of the raisin lots by an amount approximating the weight of the raisins needed to be removed in order for the remainder of the lot to meet minimum grade requirements. The weight determined in this manner represented the creditable weight of the raisins which was used as the basis for payments to producers by handlers. Those raisins that failed to meet the established substandard tolerance levels (10 percent or 17 percent, depending on the varietal type) were returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards.

The substandard dockage system was established in 1985 to encourage producers to deliver high quality raisins to handlers for processing. This season, however, extreme weather conditions seriously affected the quality of the crop, and the RAC predicted that a relatively high percentage of the 1991-92 crop would not meet the upper limit (10 percent or 17 percent, depending on the varietal type) for the amount of substandard raisins permitted in lots of standard raisins. Normally, approximately 2 to 6 percent of a crop is substandard. This season, the RAC estimated that the amount of substandard raisins would average about 14.5 percent of the crop. Therefore, the RAC recommended that, for the 1991-92 crop year only, a handler may acquire, under an agreement with a producer, lots of raisins containing more than 10 percent or 17 percent, depending on the varietal type, substandard

raisins. Rather than return those lots to the producer, the handler will apply the weight dockage factors contained in § 989.212 (described above) to such lots of raisins.

For producers and handlers electing to use the relaxed upper limit for substandard raisins, the burden of removing substandard fruit is shifted from the producer to the handler. However, handlers can more efficiently and economically manage the situation since they already have equipment which is designed to remove substandard fruit. This action also eliminates the cost to producers for hauling such lots from the handlers' premises, for reconditioning, for returning such reconditioned lots to handlers, and for reinspection of the lots.

It is expected that this action will facilitate the delivery and handling of the 1991-92 crop and minimize the additional handling expenses caused by the lower quality of this year's crop for both producers and handlers, particularly for small producers. Producers will be able to deliver their 1991-92 crop raisins to the handlers, and the handlers can receive them and remove the excess substandard fruit during normal pre-grading or processing.

An interim final rule on this action was published in the *Federal Register* on October 10, 1991 (56 FR 51150). That rule provided that interested persons could file written comments through November 12, 1991. No comments were received.

Based on the above information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

Subpart—Supplementary Regulations

2. Accordingly, the interim final rule revising § 989.212, which was published at 56 FR 51151 on October 10, 1991, is adopted as a final rule without change.

Dated: December 23, 1991.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 91-31035 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1945

Implementation of the Provisions of the Dire Supplemental Appropriations Act (Pub. L. 102-229)

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide special disaster assistance to eligible farmers and ranchers who sustained severe production losses in 1990 or 1991 as a result of natural disasters. This action is necessary to implement the provisions of the Dire Supplemental Appropriations Act, (Pub. L. 102-229), dated December 12, 1991. The intended effect is to incorporate the law into existing FmHA regulations.

DATES: Interim rule effective December 30, 1991. Written comments must be submitted on or before January 29, 1992.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Ferguson, Loan Specialist, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 690-4018.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512-1, which

implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of \$100 million or more. The language in the Supplemental Appropriations Bill relating to the waiver of crop insurance is similar to such language in the Disaster Assistance Act of 1989, (Pub. L. 101-82) and the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act) (Pub. L. 101-624). In Fiscal Year (FY) 1988, 554 Emergency (EM) loans were made, totaling approximately \$30 million. As a prerequisite to obtaining a loan, however, applicants were required to show that the damaged 1987 crop was insured, or was not eligible for crop insurance at the beginning of the 1988 crop year. In FY 1989, 2,806 EM loans were made for a total of approximately \$73 million. In FY 1990, 2,609 EM loans were made for a total of approximately \$102 million. In FY 1991, 1,181 loans were made for a total of approximately \$82 million. The crop insurance requirement was waived for losses to the 1988 and 1989 crops by the Disaster Assistance Acts of 1988, (Pub. L. 100-387) and 1989, the FACT Act, as amended, waived the requirement for losses to the 1990 crop and the Dire Supplemental Appropriations Act waives it again for 1991 crop losses. Had there been no waiver during 1990 and 1991, some EM loans still would have been made as evidenced by loans made in 1988. As a result of this waiver for 1991 crop losses, we do not anticipate an annual effect on the economy of \$100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly

affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30-day comment period. The Dire Supplemental Appropriations Act dated December 12, 1991, amended FmHA's statutory loan making authorities. It is necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who have suffered major crop production losses as a result of natural disasters in 1990 and 1991.

Farmers who have suffered severe production losses are in dire need of disaster program assistance to purchase livestock feed for replacement of feed crops lost as a result of the disaster(s), and to repay creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long term debts.

The Act mandates changes in the emergency loan regulations. These changes ease the requirements for obtaining assistance under this program, as did previous changes made as a result of the Disaster Assistance Acts of 1988 and 1989 and the FACT Act of 1990. By implementing these regulations immediately, assistance can be provided to many needy farmers and ranchers who, without this assistance, would be in danger of losing their operations.

Background

The loan making, supervision and servicing of FmHA borrowers is governed primarily by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). Specifically, 7 U.S.C. 1961(b) makes applicants for EM loans ineligible if crop insurance was available, but not obtained, for crops lost in the disaster. The purpose for revising the FmHA regulations at this time is to implement various provisions of the Supplemental Appropriations Act as it applies to EM loans. In particular, Title I, Chapter III of the Act states, in part, that EM loans "made with respect to damage to an annual crop planted for harvest in 1991 * * * shall be made available without regard to the purchase of crop insurance * * *."

Due to the urgent need of financial assistance for many farmers and ranchers, FmHA has expedited the implementation of these changes.

Changes

The existing Emergency (EM) loan regulations state that applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). The FACT Act of 1990 suspended this requirement for farmers and ranchers who suffered severe crop production losses due to drought and other natural disasters in 1990 and who otherwise qualified for emergency loan assistance due to crop production losses in 1990. The Supplemental Appropriations Bill again suspends this requirement for crop production losses in 1991. These statutes waive this requirement only for crops planted for harvest in 1990 and 1991.

The above-referenced statutes provide for the waiver of crop insurance for the 1990 and 1991 crop year. However, it is administratively required that eligible applicants must agree to purchase multi-peril crop insurance for the 1992 crop or commodity which suffered disaster losses due to natural disasters in 1991 and for which the EM loan is sought. However, if any of the following conditions exist, applicants will not be required to obtain crop insurance for their 1992 crop:

- (1) Crop insurance is not available for the crop for which the loan is sought.
- (2) The applicant's annual premium rate for the crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1990 crop in the county where the applicant's farming operation is located.
- (3) The annual premium for such crop insurance is greater than 25 percent of the amount of the EM loan sought.
- (4) The applicant's 1990 or 1991 production loss, with respect to the crop(s)/commodity(ies) for which the EM loan is made, does not exceed 65 percent.
- (5) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance would impose an undue financial hardship, and that a waiver of the requirement to obtain crop insurance should be granted by the County Committee.

The crop insurance requirement on the 1992 crop and the existence of any of the conditions to waive it were mandated by the Disaster Assistance Act of 1989 and the FACT Act of 1990.

The crop insurance requirement and waiver provisions, however, were not incorporated into the Dire Supplemental Appropriations Act. Nevertheless, FmHA has decided administratively to require that EM borrowers obtain insurance on their 1992 crops, except where the borrowers satisfy any one of the five waivers, which are identical to the waivers provided in the 1989 and 1990 Acts. This requirement is adopted because the agency believes that obtaining crop insurance reduces risk by minimizing the impact of weather disasters on crop production, and thus is a good management tool. In addition, requiring crop insurance on EM borrowers' 1992 crops furthers the Department's policy of supporting the crop insurance program, which thereby reduces the need for the enactment of costly disaster assistance provisions.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Section 1945.167 is amended by revising paragraph (a) to read as follows:

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans are not authorized for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/ designated/authorized disaster(s). However, as a result of 1990 and 1991 natural disasters, the Food, Agriculture, Conservation and Trade Act of 1990 and the Dire Supplemental Appropriations Act (Pub. L. 102-229) provide for the waiver of this mandatory crop insurance requirement, but only for crops planted for harvest in 1990 or 1991. Under these waiver provisions, disaster related

production losses sustained to crops planted for harvest in 1990 or 1991 will be counted in the eligibility calculation and the maximum EM loan entitlement determination, regardless of whether or not crop insurance was available to the applicant, or whether or not such insurance was purchased by the applicant. Planted for harvest in 1990 or 1991 means: (1) *For annual crops*, planted for harvest in 1990 or 1991; (2) *for perennial crops*, planted in 1991 or earlier and producing an annual crop for harvest in 1990 or 1991.

3. Section 1945.169 is amended by revising the introductory text of paragraph (n)(5), and by revising paragraphs (n)(5) (ii), (iv) and (v), and (n)(6) to read as follows:

§ 1945.169 Security requirements.

(n) * * *

(5) As a result of 1990 and 1991 natural disasters affecting 1990 or 1991 crops, it is required that all recipients of EM loans, based on 1990 or 1991 production losses, must agree to obtain multi-peril crop insurance, under the Federal Crop Insurance Act, for the 1992 crop/commodity which suffered disaster losses in 1990 or 1991, and for which the EM loan is sought. However, applicants shall not be required to obtain crop insurance for a 1992 crop/commodity when any one of the following conditions exists:

(ii) The applicant's annual premium rate for crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1990 or 1991 crop (depending upon which year's losses are claimed) in the county where the applicant's farming operation is located;

(iv) The applicant's 1990 or 1991 production loss, with respect to the crop(s) for which the EM loan is made, does not exceed 65 percent. Calculations for this determination will be performed by ASCS and entered on Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," in part II, column (b). The ASCS County Office will enter all crops for which an application for disaster assistance has been filed in the disaster year for each farm unit, and enter the percent of loss after each crop listed. Any listed crop that has a loss greater than 65 percent must be insured for 1992, if it is planned to be planted. Any listed crop that does not have a loss greater than 65 percent will not have an insurance requirement, but EM borrowers would be encouraged

to purchase insurance on all crops for which it is available;

(v) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance coverage would impose an undue financial hardship, i.e., the premium cost of the required insurance would prevent the applicant from projecting a positive cash flow, and thus disqualify the applicant for EM loan assistance. Each appeal to the County Committee for waiver of purchasing crop insurance for the 1992 crop(s) must be accompanied by a completed FmHA 431-2, "Farm and Home Plan," or comparable plan of operation for 1992, signed by the applicant and the County Supervisor. When the County Committee approves the waiver, it will be so stated on the Form FmHA 440-2, "County Committee Certification or Recommendation." If the County Committee denies the waiver, that decision will be documented on Form FmHA 440-2 and the applicant will be given full appeal rights under subpart B of part 1900 of this chapter.

(6) When an applicant purchases the necessary crop insurance for 1992 as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or causes it(them) to be cancelled before completion of the 1992 production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan made under the provisions of the Supplemental Appropriations Act of 1991. The loan approval official will insert this requirement in item 41 of Form FmHA 1940-1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

Dated: December 17, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-31143 Filed 12-24-91; 12:44 pm]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AD29

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on July 15, 1991 (56

FR 32070), that revises the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The action is necessary to correct an amendatory instruction.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: In the July 15, 1991, edition of the *Federal Register*, in the left-hand column of page 32071, amendatory instruction number 2 is corrected to read as follows:

2. In § 9.35, paragraphs (a)(1) and (a)(2) are revised to read as follows:

Dated at Bethesda, Maryland, this 23rd day of December 1991

For the Nuclear Regulatory Commission.

John D. Phillips,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91-31128 Filed 12-27-91, 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0731]

Delegations of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: Pursuant to sections 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) and (k)), the Board is amending its Rules Regarding Delegations of Authority (12 CFR part 265). The amendments make technical corrections to the rules that were reorganized effective May 17, 1991.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Patrick J. McDivitt, Attorney (202/452-3818), Legal Division; for the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 11(k) of the Federal Reserve Act provides that the Board may delegate any of its functions, other than those

related to rulemaking or principally to monetary and credit policies. Section 11(i) authorizes the Board to make regulations necessary to enable the Board to perform its duties effectively. Pursuant to this authority, the Board is making technical amendments to its Rules Regarding Delegation of Authority (12 CFR part 265). The amendments correct technical mistakes discovered and personnel changes made since the major reorganization and revision of these delegation rules effective May 17, 1991 (56 FR 25614; June 5, 1991). These changes consist of correcting references and citations to several individual delegations and revising the language of a few delegations.

Notice and Public Participation; Effective Date

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because they amend a rule of agency procedure and practice, and section 553(b) does not apply to such rules. The Board finds that it is impracticable and contrary to the public interest to delay adoption because the amendments correct technical mistakes currently appearing in this rule and reflect the personnel changes.

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of these amendments. Section 553(d) provides that such prior notice is not necessary whenever a rule reduces regulatory burdens or there is good cause for finding that such notice is contrary to the public interest. This rule, which is procedural and technical in nature, does reduce such a burden, and, as noted, the Board has determined that delaying the effectiveness of that relief is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601et seq.), the Board certifies that the proposed amendments will not have a significant adverse economic impact on a substantial number of small entities. The proposed amendments reorganize the Board's Rules Regarding Delegation of Authority and reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 265

Delegations of authority, Banks, Banking, Federal Reserve System.

For the reasons set forth above, the Board is amending 12 CFR part 265 by revising it to read as follows:

PART 265—[AMENDED]

1. The authority citation for part 265 is revised to read as follows:

Authority: Sections 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) & (k)).

§ 265.5 [Amended]

2. Section 265.5(c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) *Reserve Bank director interlocks.* To take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director, senior officer, or principal shareholder of any holding company, bank, or company involved in the transaction is a director of that Reserve Bank or branch of the Reserve Bank.

* * * * *

§ 265.7 [Amended]

3. Section 265.7(c)(2) is amended by removing "§ 265.11(d)(5) and (f)" and adding in its place "§§ 265.11(c)(2)(ii) and 265.11(c)(3)(iii)".

4. Section 265.7(c)(4)(i) is amended by removing "225.71" and adding in its place "225.72".

§ 265.7 [Amended]

5. Section 265.7 is amended by adding a new paragraph (c)(6) to read as follows:

* * * * *

(c) * * *

(6) *ERISA violations.* To provide the Department of Labor written notification of possible significant violations of the Employee Retirement Income Security Act (ERISA) by bank holding companies, in accordance with section 3004(b) of ERISA and the Interagency Agreement adopted to implement its provisions.

* * * * *

6. Section 265.7(e)(3) is amended by adding "by" between "(ERISA)" and "member".

7. Section 265.7(e)(5) is revised to read as follows:

* * * * *

(e) * * *

(5) *Capital stock reduction; branch applications; declaration of dividends; investment in bank premises.* To exercise the functions described in §§ 265.11(e)(5), (11), and (12) of this part (reductions in capital, issuance of subordinated debt, and early retirement of subordinated debt) when the conditions specified in those sections

preclude a Reserve Bank from acting on a member bank's request for action or when the Reserve Bank concludes that it should not take action, and to exercise the functions in §§ 265.11(e)(3), (4), and (7) of this part (approving branch applications, declaration of dividends, and investment in bank premises) in cases in which the Reserve Bank concludes that it should not take action.

8. Section 265.7(e)(6) is revised to read as follows:

(e) ***

(6) *Security devices; Regulation P.* To exercise the functions described in § 265.11(e)(8) of this part in those cases in which the appropriate Reserve Bank concludes that it should not take action for good cause.

9. Section 265.7(f)(2) is amended by removing "78(h)" and adding in its place "78(h)".

10. Section 265.7(f)(10) is revised to read as follows:

(f) ***

(10) *Lists of OTC and foreign margin stocks.* To approve issuance of the lists of OTC margin stocks and foreign margin stocks and add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest under section 207.6(d) of Regulation G (12 CFR part 207), § 220.17(f) of Regulation T (12 CFR part 220), or § 221.7(d) of Regulation U (12 CFR part 221).

§ 265.9 [Amended]

11. Section 265.9(b) is revised to read as follows:

(b) *Consumer Advisory Council.* Pursuant to section 703(b) of the Consumer Credit Protection Act (15 U.S.C. 1691b(b)), to call meetings of and consult with the Consumer Advisory Council established under that section, approve the agenda for such meetings, and accept any resignations from Consumer Advisory Council members.

§ 265.11 [Amended]

12. Section 265.11(c)(9)(i) is amended by removing "225.71" and adding in its place "225.72".

§ 265.11 [Amended]

13. Section 265.11(f) is revised to read as follows:

(f) *Securities.*—(1) *Application for termination of registration.* To approve applications by a registered lender for termination of the registration under

§ 207.3(a)(2) of Regulation G (12 CFR part 207).

(2) *Agreements from nonmember banks; extensions of credit.* To accept agreements concerning extensions of credit to finance securities transactions on behalf of the Board from nonmember banks in the form prescribed by the Board under section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)).

§§ 265.4, 265.6, 265.7, 265.11 [Amended]

14. In addition to the amendments set forth above, in 12 CFR part 265 remove the word "Staff" where it appears with "Director" and refers to the Staff Director for the Division of Banking Supervision and Regulation in the following places:

- a. In the Table of Contents at § 265.7
- b. Section 265.4(a)(2)
- c. Section 265.6(a)(4)
- d. Section 265.6(c)(3)
- e. Section 265.6(c)(5)
- f. Section 265.6(d)(2)
- g. Section 265.7 in the section heading and introductory text
- h. Section 265.7(a)(2) in both places
- i. Section 265.7(a)(4)
- j. Section 265.7(d)(5)
- k. Section 265.7(d)(7)(i)
- l. Section 265.11(a)(15) introductory text
- m. Section 265.11(c)(6)

§§ 265.5, 265.7, 265.11 [Amended]

15. In addition to the amendments set forth above, in 12 CFR part 265 remove the reference "25(a)" and add in its place "25A" in the following places:

- a. Section 265.5(d)(1) introductory text
- b. Section 265.5(d)(2) introductory text in both places
- c. Section 265.7(d)(2)
- d. Section 265.7(d)(3)
- e. Section 265.11(a)(2)
- f. Section 265.11(a)(3)
- g. Section 265.11(a)(13)
- h. Section 265.11(d)(2) introductory text

This action is approved by the Secretary of the Board, with the concurrence of the Board's General Counsel, pursuant to § 265.5(a)(4) of the Board's Rules Regarding Delegation of Authority (12 CFR 265.5(a)(4)).

By order of the Board of Governors of the Federal Reserve System, December 23, 1991.
William W. Wiles,
Secretary of the Board.

[FR Doc. 91-31087 Filed 12-27-91; 8:45 am]
BILLING CODE 6210-10-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 705

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union
Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration ("NCUA") is amending § 705.7(d) of its Rules and Regulations to allow the NCUA Board to charge interest rates of between one and three percent on loans made under this Part. The previous rate was set at three percent. This change gives the NCUA Board more flexibility in granting loans and will be helpful to credit unions, especially in today's environment of lower interest rates.

DATE: Effective December 30, 1991.

ADDRESSES: NCUA, Community Development Revolving Loan Program For Credit Unions, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Ronald N. Lewandowski at the above address or telephone (202) 682-9780.

SUPPLEMENTARY INFORMATION: Section 705.7(d) of NCUA's Regulations provides that loans made under the Community Development Revolving Loan Fund Program for Credit Unions (Program) shall bear interest at a fixed annual percentage rate of 3 percent. The NCUA Board is of the opinion that the interest rate charged on loans should be flexible and not exceed 3 percent, and that the Board should have the ability to reduce the rate below 3 percent but not less than 1 percent if this would be in the best interest of the credit unions participating in the Program. Since this rule change does not have an adverse or restrictive effect on credit unions participating in the Program, this rule change is effective immediately. The Board is issuing a final rule without first issuing a proposed rule because it believes a proposed rule unnecessary due to the benefit the change provides for credit unions participating in the Program.

The NCUA Board will announce the interest rate to be charged on loans at the same time it announces that applications for participation will be accepted pursuant to § 705.9 of the rule.

Regulatory Procedures

Neither the Paperwork Reduction Act, the Regulatory Flexibility Act nor Executive Order 12612 have any bearing on the final regulatory change since it is

merely a change allowing the Board flexibility in lowering interest rates on Program loans.

List of Subjects in 12 CFR Part 705

Credit Unions, loan programs—housing and community development.

By the National Credit Union Administration Board on December 16, 1991.
Becky Baker,
Secretary, NCUA Board.

Accordingly, NCUA amends chapter VII of title 12 of the Code of Federal Regulations as follows:

Part 705—Community Development Revolving Loan Program for Credit Unions

1. The authority citation for part 705 continues to read as follows:

Authority: Pub. L. 97-35; Pub. L. 99-609, note to 42 U.S.C. 9822; Pub. L. 101-144.

2. Section 705.7(d) is revised to read as follows:

§ 705.7 Loans to participating credit unions.

(d) *Interest Rates.* Loans made under this rule shall bear interest at a fixed annual percentage rate of not more than 3 percent or not less than 1 percent as determined by the NCUA Board.

[FR Doc. 91-30590 Filed 12-27-91; 8:45 am]
BILLING CODE 7535-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

[91-643]

Description of Organization and Functions

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is adopting a new part 900 describing its basic units of organization and their functions, and giving the address of the agency for purposes of requesting information. This action is being taken in accordance with the requirements of the Freedom of Information Act, as amended ("FOIA") (5 U.S.C. 552).

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

Paragraphs (1)(A) and (1)(B) of section 552(a) of the FOIA mandate that each agency separately publish in its regulations a description of its organization and general means by which agency functions are channeled within its organization, as well as give the address to which requests for information may be made. 5 U.S.C. 552(a)(1) (A) & (B) (1988). Therefore, since the Finance Board is subject to FOIA [See H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424 (1989) *reprinted in* (1989) U.S. Code, Cong. & Ad. News 86, 463], the Finance Board is adopting this part to fulfill the FOIA requirements.

The Finance Board is adopting this part in tandem with other regulations that will deal with procedures for requesting information from the Finance Board, a description of available Finance Board forms, and a schedule of fees charged to the general public for the production of documents and records pursuant to the FOIA.

In addition to the office units described in this part, the Finance Board continues the established practice of the former Federal Home Loan Bank Board of issuing the Federal Home Loan Bank consolidated bonds and notes through the Office of Finance, which is a joint office of the Federal Home Loan Bank System.

B. Administrative Procedure Act

The Finance Board is adopting this part as a final rule, effective on December 30, 1991. The Finance Board believes that the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553) may be suspended pursuant to 5 U.S.C. 553(a)(2) and 553(d)(3) for purposes of this rule on two bases. First, paragraph (a)(2) of section 553 states that the Administrative Procedure Act does not apply to matters of agency management, and this rule deals exclusively with agency management issues. Second, paragraph (d)(3) of the same section permits an agency to find good cause that a rule may be effective in less than thirty days following its adoption by the agency. The concept of a thirty-day waiting period is inapplicable in the context of this part, since it is merely a description of the offices and units of the Finance Board. Therefore, the Board of Directors finds that good cause exists to suspend the notice and comment period when issuing this part.

C. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this

regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 12 CFR Part 900

Organizations and functions (Government agencies).

Accordingly, the Finance Board adds part 900 to chapter IX, title 12, Code of Federal Regulations, as follows:

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

Subpart A—Functions and Responsibilities of Finance Board

- Sec.
900.1 Definitions.
900.2 General Statement and statutory authority.
900.3 Location and business hours.
900.4 Federal Home Loan Bank System.
900.5 Financing Corporation.

Appendix to Subpart A of Part 900—Federal Home Loan Banks

Subpart B—General Organization

- 900.10 Board of Directors.
900.11 Chairperson.
900.12 Office of Executive Director.
900.13 Executive Secretariat.
900.14 District Banks Directorate.
900.15 Housing Finance Directorate.
900.16 Office of General Counsel.
900.17 Office of the Inspector General.
900.18 Office of Strategic Planning.
900.19 Office of Administration.
900.20 Office of Public Affairs.
900.21 Office of Congressional Affairs.

Subpart C—Delegations of Authority

- 900.30 Director of the Office of Finance.

Subpart D—Procedures

- 900.50 General statement on procedures and forms.
900.51 Forms.
900.52 Submittal of requests for information.
900.53 Official seal.
900.54 Official logo.

Authority: 5 U.S.C. 552; sec. 2B(a), as added by sec. 702(a), 103 Stat. 414 (1989) (12 U.S.C. 1422b(a)).

Subpart A—Functions and Responsibilities of Finance Board

§ 900.1 Definitions.

As used in this part:
Bank means a Federal Home Loan Bank.

Bank Act means the Federal Home Loan Bank Act.

Bank System means the Federal Home Loan Bank System, consisting of the Federal Home Loan Banks.

Finance Board means the Federal Housing Finance Board.

§ 900.2 General statement and statutory authority.

(a) The Finance Board is an independent, executive agency in the

Federal Government, responsible for regulating the Federal Home Loan Bank System. It is funded through assessments levied upon the Federal Home Loan Banks. These funds are not considered Government Funds or appropriated monies. The Finance Board is governed by a five-member Board of Directors and administered by a full-time staff.

(b) The members of the Board of Directors are individually referred to as Directors. The heads of the various administrative units, called offices or directorates, are also called Directors.

(c) The Finance Board administers Chapter 11 of the Bank Act, as amended, and is authorized to issue rules, regulations and orders affecting the Banks. The Finance Board performs all such duties and responsibilities as may be required by statute. Under section 302(b)(2) of the Federal National Mortgage Association Charter Act, it also conducts a monthly survey of all major lenders to calculate a national average for interest rates on mortgages for one-family homes, on behalf of the Federal National Mortgage Association. Under section 305(b) of the Federal Home Loan Mortgage Corporation Act, it conducts a similar survey for the Federal Home Loan Mortgage Corporation.

§ 900.3 Location and business hours.

(a) *Location.* All office units of the Finance Board are located at 1777 F Street, NW., Washington, DC 20006.

(b) *Hours of operation.* The regular hours of operation of the Finance Board are from 8:30 a.m. to 5:30 p.m. Monday through Friday.

§ 900.4 Federal Home Loan Bank System.

(a) The Finance Board regulates the Banks, created under the Bank Act. Specifically, its duties are:

(1) To ensure that the Banks operate in a safe and sound manner;

(2) To supervise all lending and related operations of the Banks, which may include:

(i) Prescribing conditions upon which Banks may advance funds to their member lending institutions;

(ii) Prescribing rules and conditions under which a Bank may borrow funds, pay interest on those funds, or issue obligations;

(iii) Requiring examinations of the Banks;

(iv) Appointing the public members of the boards of directors of the Banks, conducting the elections of the members who are elected by the members of the Banks, and designating the Chairman and Vice-Chairman of the boards of directors of the Banks;

(v) Approving dividends paid by the Banks on their capital stock;

(vi) Approving applications for membership in a Bank; and

(vii) Approving the Bank Presidents selected by the Banks' board of directors and approving the salaries of top level Bank officers;

(3) To ensure that the Banks fulfill their mission of channeling funds to the housing finance industry by making long term loans to financial lending institutions for use in mortgage lending;

(4) To ensure that the Banks remain adequately capitalized; and

(5) To ensure that the Banks are able to raise funds in the capital markets.

(b) The Finance Board issues the Federal Home Loan Bank consolidated bonds or notes that are the joint and several obligations of the Banks. The Finance Board issues these obligations through the Office of Finance, which is a joint office of the Bank System.

§ 900.5 Financing Corporation.

The Finance Board oversees the operations of the Financing Corporation, including its issuance of obligations. The Financing Corporation is a mixed ownership government corporation chartered by the Finance Board under section 302 of the Competitive Equality Banking Act of 1987, 101 Stat. 552, 585 (1987) (12 U.S.C. 1441).

Appendix to Subpart A of Part 900—Federal Home Loan Banks

Federal Home Loan Bank District 1

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Federal Home Loan Bank of Boston

One Financial Center, 20th Floor, Boston, Massachusetts 02111

Federal Home Loan Bank District 2

(New Jersey, New York, Puerto Rico, Virgin Islands)

Federal Home Loan Bank of New York

One World Trade Center, 103rd Floor, New York, New York 10048

Federal Home Loan Bank District 3

(Delaware, Pennsylvania, West Virginia)

Federal Home Loan Bank of Pittsburgh

One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893

Federal Home Loan Bank District 4

(Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia)

Federal Home Loan Bank of Atlanta

1475 Peachtree Street, NE., Atlanta, Georgia 30309

Federal Home Loan Bank District 5

(Kentucky, Ohio, Tennessee)

Federal Home Loan Bank of Cincinnati

2400 Atrium Two, 221 East Fourth Street, Cincinnati, Ohio 45202

Federal Home Loan Bank District 6

(Indiana, Michigan)

Federal Home Loan Bank of Indianapolis

8250 Woodfield Crossing Boulevard, Indianapolis, Indiana 46240

Federal Home Loan Bank District 7

(Illinois, Wisconsin)

Federal Home Loan Bank of Chicago

111 East Wacker Drive, Suite 700, Chicago, Illinois 60601

Federal Home Loan Bank District 8

(Iowa, Minnesota, Missouri, North Dakota, South Dakota)

Federal Home Loan Bank of Des Moines

907 Walnut Street, Des Moines, Iowa 50309

Federal Home Loan Bank District 9

(Arkansas, Louisiana, Mississippi, New Mexico, Texas)

Federal Home Loan Bank of Dallas

5605 North MacArthur Boulevard, Irving, Texas 75038

Federal Home Loan Bank District 10

(Colorado, Kansas, Nebraska, Oklahoma)

Federal Home Loan Bank of Topeka

Townsite Plaza Two, 120 East Sixth Street, Topeka, Kansas 66603

Federal Home Loan Bank District 11

(Arizona, California, Nevada)

Federal Home Loan Bank of San Francisco

600 California Street, San Francisco, California 94108

Federal Home Loan Bank District 12

(Alaska, Guam, Hawaii, Idaho, Montana, Oregon, Pacific Islands, Utah, Washington, Wyoming)

Federal Home Loan Bank of Seattle

1501 Fourth Avenue, 19th Floor, Seattle, Washington 98101-1693

Subpart B—General Organization

§ 900.10 Board of Directors.

The Board of Directors consists of five members ("Directors"). Four Directors are appointed by the President, with the advice and consent of the Senate, for seven-year terms. The fifth Director, the Secretary of Housing and Urban Development, is an *ex officio* Director. Not more than three Directors may belong to the same political party. By law, the four appointed Directors must have backgrounds in housing finance or a demonstrated commitment to providing specialized housing credit, and one such Director must have a background with an organization with a two-year record of representing consumer or community interests on

either banking services, credit needs, financial consumer protection or housing. The Board of Directors sets agency policy and issues resolutions, rules, regulations and orders, as necessary.

§ 900.11 Chairperson.

The President designates one appointed Director as Chairperson of the Board of Directors, who presides over the meetings of the Board of Directors. The Board of Directors has delegated, by resolution, the responsibility of overall management and organizational or personnel administration of the Finance Board to the Chairperson.

§ 900.12 Office of the Executive Director.

The Executive Director has been delegated authority by order of the Chairperson to organize and manage the administration and operation of the Finance Board on a daily basis. The Executive Director is the senior staff official at the Finance Board and directs agency operations on behalf of the Chairperson. The Executive Director is authorized to sign documents on behalf of the Chairperson or the Board of Directors, including regulations, resolutions or orders when duly passed by the Board of Directors. The Executive Director certifies documents of the Finance Board or Board of Directors.

§ 900.13 Executive Secretariat.

The Executive Secretary to the Board of Directors ("Executive Secretary") is the recording officer for the Board of Directors and custodian of its records, including copies of any resolutions, rules, or orders. As the recording officer, the Executive Secretary is responsible for the preparation and maintenance of the minutes or other records of all official actions and proceedings of the Board of Directors, and is responsible for the official seal of the Finance Board. The Executive Secretary is the primary Liaison Officer with the Office of the Federal Register.

§ 900.14 District Banks Directorate.

The Director of the District Banks Directorate has responsibility for the Finance Board's regulatory oversight of the Bank System. The District Banks Directorate consists of three divisions: The Operations Division, the Financial Division, and the Examination Division.

(a) The Operations Division is responsible for developing and maintaining the Finance Board's Policy Manual for the Banks. The Division is also responsible for policies and procedures for Bank membership; the process of appointing and electing

directors to the boards of directors of the Banks; maintaining copies of the minutes of meetings of the board of directors of each Bank; and maintaining records on all individual Bank policies and marketing activities.

(b) The Financial Division is divided into two sections:

(1) The Financial Reporting Section is responsible for Bank financial reporting, data collection and its analysis. It is responsible for the Bank System monthly financial reports for the Board of Directors. This Section also analyzes accounting policy issues and prepares the Bank System's combined financial reports.

(2) The Regulatory Analysis Section is responsible for the modeling and analysis of all Finance Board supervisory financial policies, including analysis of regulatory policies. This Section also monitors Bank System compliance with Finance Board regulations and policies, and reviews quarterly dividend recommendations. This Section is the Finance Board's primary liaison to the Bank System Office of Finance.

(c) The Examination Division is responsible for the examination of the Bank System to ensure its safety and soundness and compliance with its statutory mission as well as Finance Board regulations, orders, rules or policies. At least annually, the Division conducts regular examinations of the individual Banks and the Bank System Office of Finance, and conducts special examinations as the need arises. It is also responsible for reviewing and evaluating the work of each Bank's internal audit staff and is the primary liaison between the Finance Board and each Bank's audit committee.

§ 900.15 Housing Finance Directorate.

The Director of the Housing Finance Directorate is responsible for the development and implementation of the housing finance policies and programs of the Finance Board, and is the chief advisor to the Board of Directors on housing finance issues. The Director has responsibility for the operation and oversight of such programs as the Affordable Housing Program, the Community Investment Program, the Community Support Review Program, and the Monthly Survey of Rates and Terms of Conventional One-Family Nonfarm Mortgage Loans. The Director is responsible for the preparation of an annual report to Congress and to the Banks' Advisory Councils concerning Bank System support of low-income housing and community development. The Director is the Finance Board's primary liaison with the Banks'

Advisory Councils, the Banks' Community Investment Officers, the Resolution Trust Corporation Affordable Housing Disposition Program, and public-interest organizations and community groups concerned with affordable housing and community economic development.

§ 900.16 Office of General Counsel.

The General Counsel is the chief legal officer of the Finance Board and, as such, advises the Board of Directors, and any Finance Board officer or employee upon request, on interpretations of law or regulations. The General Counsel prepares all legal documents on behalf of the Finance Board and prepares opinions, regulations, and legal interpretations at the request of the Chairperson, the Board of Directors, any Finance Board Office or Directorate and the Banks. The General Counsel represents the Finance Board in all administrative adjudicatory proceedings before the Board of Directors. The Board of Directors appoints the Finance Board Designated Agency Ethics Official from the staff of the Office.

§ 900.17 Office of Inspector General.

The Inspector General is subject to, and operates under, the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. App. p. 1184 (1988)). The Inspector General reports directly to the Chairperson and the Board of Directors. The Inspector General is charged with policy direction for audits and investigations of Finance Board programs or operations, and to conduct, supervise and coordinate such audits and investigations in order to promote economy and efficiency in the administration of such programs and operations; and to detect fraud, waste and abuse at the Finance Board. The Inspector General transmits two semiannual reports to Congress on the activities of the Office of Inspector General.

§ 900.18 Office of Strategic Planning.

The Director of the Office of Strategic Planning is responsible for providing to the Finance Board policy and planning evaluation and recommendations designed to further the continued vitality of the Bank System.

§ 900.19 Office of Administration.

The Director of the Office of Administration is the senior administrative officer of the Finance Board, under the Executive Director, and is the chief advisor to the Chairperson and the Board of Directors on internal management and organization affecting

Finance Board office units. The Office of Administration consists of five divisions: Budget and General Services; Personnel; Compensation and Benefits; Contracts; and Management Information Systems.

(a) The Budget and General Services Division is responsible for overall financial management of the Finance Board (except Federal Home Loan Bank consolidated obligations) and coordinates building services.

(b) The Personnel Division is responsible for developing and managing personnel policies and procedures of the Finance Board.

(c) The Compensation and Benefits Division is responsible for developing and managing policies and procedures for compensation, awards, insurance and retirement benefits, and other related benefits.

(d) The Contracts Division is responsible for contracting and procurement activities, under the Contracting Officer.

(e) The Management Information Systems Division is responsible for coordinating the design, programming, operation and maintenance of the Finance Board's electronic data system.

§ 900.20 Office of Public Affairs.

The Director of the Office of Public Affairs is responsible for the dissemination of Finance Board actions, policies, and press releases to the public and the news media. The Director is the Finance Board's primary liaison to news reporters. The Director prepares responses to inquiries of a general nature regarding any regulatory or internal operation of the Finance Board.

§ 900.21 Office of Congressional Affairs.

The Director of the Office of Congressional Affairs is responsible for ensuring the effective coordination and communication between the Congress and the Finance Board, and for briefing the Chairperson, or Executive Director, on legislative issues before Congress pertaining to the Finance Board, the Bank System or the Financing Corporation.

Subpart C—Delegations of Authority

§ 900.30 Director of the Office of Finance.

The Office of Finance is a joint office of the Bank System, created under the auspices of the Banks pursuant to a regulation promulgated by the former Federal Home Loan Bank Board, and currently at § 932.55. The Office of

Finance is described as a joint or collective office at section 2B(b) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(b)(2)). The Director of the Office of Finance, or the Deputy Director in the absence of the Director, is delegated the authority by the Board of Directors to issue Federal Home Loan Bank consolidated bonds or notes on behalf of the Finance Board, pursuant to section 10 of the Bank Act, and to set the interest rate on such bonds or notes, in accordance with such guidance or ranges determined through periodic resolutions by the Board of Directors.

Subpart D—Procedures

§ 900.50 General statement on procedures and forms.

Regulations and rules of procedure of the Finance Board are published in chapter IX of Title 12 of the Code of Federal Regulations and in supplementary material published in the *Federal Register*. The Finance Board will prescribe the procedures governing the course and conduct of proceedings before the Board of Directors in its General Regulations. When and wherever appropriate, the Finance Board may supplement its administrative procedures with informal procedures designed to aid the public or facilitate the proceedings, including the rendering of advice or assistance to persons dealing with the Finance Board or its Board of Directors.

§ 900.51 Forms.

The following forms are available at the Finance Board headquarters facility and shall be used for the purpose indicated:

Form:

- 10-91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.
- 9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.
- 9103—Election Ballot, Election of Federal Home Loan Bank Directors.
- A-1—Appointive Director Candidates—Personal Certification and Disclosure Form.
- A-2—Appointive Directors—Personal Certification and Disclosure Form.
- E-1—Elective Director Nominees—Personal Certification and Disclosure Form.
- E-2—Elective Directors—Personal Certification and Disclosure Form.
- FB-1—Finance Board Appointive Directors—Personal Certification and Disclosure Form.
- 90-T04—Local Travel Claim.

§ 900.52 Submittal of requests for information.

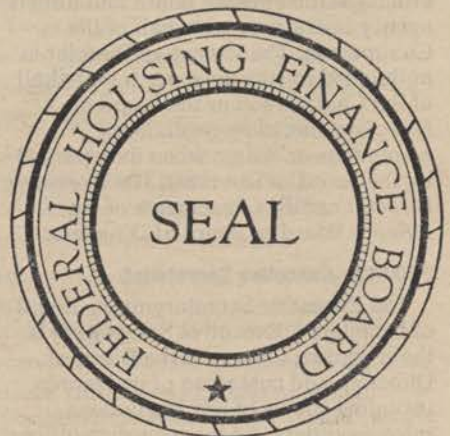
Requests for general information concerning the Finance Board or the Bank System should be made in person at the headquarters facility, at the address listed in § 900.3, or in writing addressed to the Executive Secretary at the same address.

§ 900.52 Official Seal.

This section describes and displays the official seals used by the Finance Board to certify and authenticate official documents of the Board of Directors:

(a)(1) *Description*. A disc with the term "SEAL" in capital letters in its center, encircled by a designation scroll having an outer border with a roped edge and an inner border with a beaded edge, and containing the words "FEDERAL HOUSING FINANCE BOARD" in capital letters, in caslon type, with a mullet, in base.

(2) *Display*.



(b)(1) *Description*. A disc with a large mullet at its center and the term "FEDERAL" atop the term "HOUSING" in capital letters, in uncial type, arranged in a curved format on the upper part of the disc above the large mullet and the term "FINANCE" atop the term "BOARD" in capital letters, in uncial type, both terms arranged in a curved format on the lower part of the disc below the mullet, with two smaller mullets separating the two aforementioned terms "HOUSING" and "FINANCE", and with six mullets arranged three each in a vertical row on the left and right sides of the disc, and surrounded by a boarder consisting of two plain lines.

(2) *Display*.



(c) *Description.* A disc having the same design and description as the official logo, contained in § 900.54 and displayed in paragraph (b) of that section.

§ 900.54 Official logo.

This section describes and displays the logo adopted by the Board of Directors as the official symbol representing the Finance Board. It is displayed on correspondence and selected documents.

(a) *Description.* A disc with its center consisting of three polygons arranged in an irregular line partially overlapping—each polygon drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof—encircled by a designation scroll having an outer and inner border of plain heavy lines and containing the words "FEDERAL HOUSING FINANCE BOARD" in capital letters, in sans serif type, with two mullets on the extreme left and right of the scroll.

(b) *Display.*



By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91-31004 Filed 12-27-91; 8:45 am]

BILLING CODE 8725-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Disaster Loans

AGENCY: Small Business Administration.

ACTION: Interim final rule clarification.

SUMMARY: This notice is to provide clarification of the interim final rule, published in the *Federal Register* on December 19, 1991 (56 FR 65954), which amended SBA's regulations concerning physical and economic injury disaster loans to implement a program for direct loans to small business concerns which have sustained severe economic injury as a result of troop deployments, related to the Persian Gulf conflict, from military installations in the same county or a county contiguous thereto.

FOR FURTHER INFORMATION CONTACT:

Alfred E. Judd, Acting Assistant Administrator for Disaster Assistance, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Section 1087 of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, enacted on December 5, 1991, authorizes the Administrator of SBA to make emergency direct loans to small business concerns located in a county in the United States in which at least five (5) small business concerns have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, in connection with the Persian Gulf conflict, of members and units of the Armed Forces from military installations in or near that county. Section 123.68 of the regulation, provides that, pursuant to Public Law 102-190, the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101-511, if and to the extent such funding is available.

Section 123.62 of the regulation establishes the procedures Governors are required to follow to designate which counties, within his or her respective state have military installations located within them and those counties contiguous thereto, where at least five (5) small business concerns have suffered severe economic injury as a result of emergency troop deployments in connection with the Persian Gulf

conflict. (Hereinafter, the term "Governor" shall include other equivalent officials; the term "State" shall include other equivalent jurisdiction; and the term "county" shall include other equivalent political subdivisions, as defined in § 123.61 of the regulation.)

Subsection (e) of § 123.62 states that the Governor's certification, as well as all supporting documentation, should be received by the SBA Office of Disaster Assistance, Central Office, within 15 days of the effective date of the regulation. Further, the regulation provides that those certifications that are received within the 15-day period will be processed prior to the commencement of the application filing period. The certifications received after the 15-day period will be processed in an expeditious manner.

This 15-day period will not begin until the necessary funds have been made available for use by the Administrator of SBA to implement this program. As previously stated, the regulation provides that, pursuant to Public Law 102-190, the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101-511, if and to the extent such funding is available (emphasis added). Thus, to reiterate, the 15-day period within which the Governors' certifications are to be received shall not begin to run unless and until funds are made available to SBA to implement this program.

Dated: December 20, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-31134 Filed 12-27-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 26727; Amdt. No. 367]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory

action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for

this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on December 19, 1991.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.:

1. The authority citation for part 35 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M



REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 367 EFFECTIVE DATE, JANUARY 9, 1992

FROM	TO	MEA	FROM	TO	MEA
§			§95.6020 VOR FEDERAL AIRWAY 20		
			IS AMENDED TO READ IN PART		
§95.1001 DIRECT ROUTES-U.S.95.55 GREEN FEDERAL AIRWAY 15			LAFAYETTE, LA VORTAC	DONBE, LA FIX	2000
IS ADDED TO READ			DONBE, LA FIX	NEW ORLEANS, LA VORTAC	3500
ST MARYS, AK NDB	ANVIK, AK NDB/DME	4000	§95.6026 VOR FEDERAL AIRWAY 26		
ANVIK, AK NDB/DME	TAKOTNA RIVER, AK NDB	*9000	IS AMENDED TO READ IN PART		
*6000 - MOCA			SALEM, MI VORTAC	DETROIT, MI VOR/DME	2900
§95.250 RED FEDERAL AIRWAY 50			DETROIT, MI VOR/DME	U S. CANADIAN BORDER	*3000
IS AMENDED BY ADDING			*2300 - MOCA		
NANWAK, AK NDB/DME	OSCARVILLE, AK NDB	3000	U.S. CANADIAN BORDER	CETUS, OH FIX	*3000
OSCARVILLE, AK NDB	ANVIK, AK NDB/DME	4100	*2300 - MOCA		
ANVIK, AK NDB/DME	BISHOP, AK NDB	4800	CETUS, OH FIX	DRYER, OH VORTAC	3000
§95.603 BLUE FEDERAL AIRWAY 3			§95.6043 VOR FEDERAL AIRWAY 43		
IS ADDED TO READ			IS AMENDED TO READ IN PART		
ANIKA, AK NDB	ANVIK, AK NDB/DME	3700	ERIE, PA VORTAC	U.S. CANADIAN BORDER	3000
ANVIK, AK NDB/DME	NORTH RIVER, AK NDB	4600	U.S. CANADIAN BORDER	BUFFALO, NY VORTAC	*3000
NORTH RIVER, AK NDB	NORTON BAY, AK NDB	3000	*2300 - MOCA		
NORTON BAY, AK NDB	HOTHAM, AK NDB	4500	§95.6044 VOR FEDERAL AIRWAY 44		
HOTHAM, AK NDB	NOATAK, AK NDB/DME	3300	IS AMENDED TO READ IN PART		
§95.6002 VOR FEDERAL AIRWAY 2			NABB, IN VORTAC	FALMOUTH, KY VOR/DME	2700
IS AMENDED TO READ IN PART			PALEO, MD FIX	DONIL, DE FIX	7000
MADISON, WI VORTAC	WAITS, WI FIX	2800	DONIL, DE FIX	SEA ISLE, NJ VORTAC	4000
WAITS, WI FIX	BADGER, WI VORTAC	4000	§95.6045 VOR FEDERAL AIRWAY 45		
§95.6011 VOR FEDERAL AIRWAY 11			IS AMENDED TO READ IN PART		
IS AMENDED TO READ IN PART			LANSING, MI VORTAC	SAGINAW, MI VORTAC	2600
WESON, KY FIX	POCKET CITY, IN VORTAC	2200	§95.6047 VOR FEDERAL AIRWAY 47		
§95.6016 VOR FEDERAL AIRWAY 16			IS AMENDED TO READ IN PART		
IS AMENDED TO READ IN PART			WESON, KY FIX	POCKET CITY, IN VORTAC	2200
BUCKEYE, AZ VORTAC	PERKY, AZ FIX	5000	§95.6051 VOR FEDERAL AIRWAY 51		
PERKY, AZ FIX	PHOENIX, AZ VORTAC	*4000	IS AMENDED TO READ IN PART		
	E BND	*4000	LIVINGSTON, TN VORTAC	LOUISVILLE, KY VORTAC	3200
	W BND	*5000	§95.6063 VOR FEDERAL AIRWAY 63		
*4000 - MOCA			IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC	*TOTEK, AZ FIX	5000	JANESVILLE, WI VORTAC	*DEBOW, WI FIX	3000
*5500 - MCA TOTEK FIX, E BND			*10000 - MRA		

FROM TO MEA
§95.6063 VOR FEDERAL AIRWAY 63—Continued
 DEBOW, WI FIX RASTT, WI FIX 4000
 RASTT, WI FIX BADGER, WI VORTAC 3000

§95.6070 VOR FEDERAL AIRWAY 70
 IS AMENDED TO READ IN PART

LAFAYETTE, LA VORTAC *ROSEY, LA FIX 1800
 *5000 - MRA
 ROSEY, LA FIX BATON ROUGE, LA VORTAC 1800

§95.6094 VOR FEDERAL AIRWAY 94
 IS AMENDED TO READ IN PART

TEACH, TN FIX BOWLING GREEN, KY VORTAC 2600

§95.6095 VOR FEDERAL AIRWAY 95
 IS AMENDED TO READ IN PART

GILA BEND, AZ VORTAC *POTER, AZ FIX 5000
 *8000 - MRA
 POTER, AZ FIX PHOENIX, AZ VORTAC 8000
 PHOENIX, AZ VORTAC WINSLOW, AZ VORTAC 10000

§95.6103 VOR FEDERAL AIRWAY 103
 IS AMENDED TO READ IN PART

U.S. CANADIAN BORDER CRATR, MI FIX *8000
 *2600 - MOCA MAA-16000
 CRATR, MI FIX LANSING, MI VORTAC 8000
 MAA-16000

§95.6105 VOR FEDERAL AIRWAY 105
 IS AMENDED TO READ IN PART

STANFIELD, AZ VORTAC PHOENIX, AZ VORTAC 5000
 PHOENIX, AZ VORTAC *AVENT, AZ FIX 5000
 *7000 - MRA
 AVENT, AZ FIX CAVES, AZ FIX 7000
 NW BND 5000
 SE BND

§95.6119 VOR FEDERAL AIRWAY 119
 IS AMENDED TO READ IN PART

NEWCOMBE, KY VORTAC HENDERSON, WV VORTAC 2800

§95.6133 VOR FEDERAL AIRWAY 133
 IS AMENDED TO READ IN PART

CETUS, OH FIX U.S. CANADIAN BORDER *3000
 *2300 - MOCA
 U.S. CANADIAN BORDER DETROIT, MI VOR/DME *3000
 *2300 - MOCA
 DETROIT, MI VOR/DME SALEM, MI VORTAC 2900

FROM TO MEA
§95.6178 VOR FEDERAL AIRWAY 178
 IS AMENDED TO READ IN PART

NEW HOPE, KY VOR/DME MCFEE, KY FIX 2700
 TRENT, KY FIX SLINK, WV FIX 8000

§95.6190 VOR FEDERAL AIRWAY 190
 IS AMENDED TO READ IN PART

PHOENIX, AZ VORTAC *LAKEY, AZ FIX 5000
 *7800 - MCA LAKEY FIX, NE BND
 TEDDI, AZ FIX *SALTS, AZ FIX **12000
 *14000 - MRA
 **10100 - MOCA
 SALTS, AZ FIX ST JOHNS, AZ VORTAC 12000

§95.6194 VOR FEDERAL AIRWAY 194
 IS AMENDED TO READ IN PART

SABINE PASS, TX VOR/DME GUSTI, LA FIX 4000
 GUSTI, LA FIX LAFAYETTE, LA VORTAC 2800
 LAFAYETTE, LA VORTAC *ROSEY, LA FIX 1800
 *5000 - MRA
 ROSEY, LA FIX BATON ROUGE, LA VORTAC 1800

§95.6216 VOR FEDERAL AIRWAY 216
 IS AMENDED TO READ IN PART

WIPED, WI FIX PETTY, WI FIX *4000
 *2400 - MOCA
 PETTY, WI FIX SQUIB, MI FIX *7000
 *2000 - MOCA

§95.6222 VOR FEDERAL AIRWAY 222
 IS AMENDED TO READ IN PART

LAKE CHARLES, LA VORTAC HATHA, LA FIX *2000
 *1400 - MOCA
 HATHA, LA FIX MAXON, LA FIX 2000

§95.6257 VOR FEDERAL AIRWAY 257
 IS AMENDED TO READ IN PART

PHOENIX, AZ VORTAC *AVENT, AZ FIX 5000
 *7000 - MRA
 AVENT, AZ FIX CAVES, AZ FIX 7000
 NW BND 5000
 SE BND

§95.6271 VOR FEDERAL AIRWAY 271
 IS AMENDED TO READ IN PART

MUSKEGON, MI VORTAC WELKO, MI FIX 3000
 WELKO, MI FIX MANISTEE, MI VOR/DME 4000

FROM	TO	MEA	FROM	TO	MEA
§95.6285 VOR FEDERAL AIRWAY 285 IS AMENDED TO READ IN PART			§95.6440 VOR FEDERAL AIRWAY 440 IS AMENDED TO READ IN PART		
WHITE CLOUD, MI VORTAC	MANISTEE, MI VOR/DME	4000	PUNTI, AK FIX	MIGAN, AK FIX	10000
			MIGAN, AK FIX	WINOR, AK FIX	*10000
			*8900 - MOCA		
§95.6291 VOR FEDERAL AIRWAY 291 IS AMENDED BY ADDING			*WINOR, AK FIX	MC GRATH, AK VORTAC	
				SE BND	**7000
				NW BND	**4000
			*8600 - MCA WINOR FIX, E BND		
			**4000 - MOCA		
§95.6305 VOR FEDERAL AIRWAY 305 IS AMENDED TO READ IN PART			§95.6459 VOR FEDERAL AIRWAY 459 IS AMENDED BY ADDING		
FLAGSTAFF, AZ VOR/DME	KACEE, AZ FIX	11000	EMMONAK, AK VOR/DME	ST MARYS, AK NDB	3000
KACEE, AZ FIX	PEACH SPRINGS, AZ VORTAC	10000			
§95.6310 VOR FEDERAL AIRWAY 310 IS AMENDED TO READ IN PART			§95.6478 VOR FEDERAL AIRWAY 478 IS AMENDED TO READ IN PART		
WESON, KY FIX	POCKET CITY, IN VORTAC	2200	FALMOUTH, KY VOR/DME	NEWCOMBE, KY VORTAC	3100
			NEWCOMBE, KY VORTAC	BECKLEY, WV VORTAC	5900
§95.6327 VOR FEDERAL AIRWAY 327 IS AMENDED TO READ IN PART			§95.6496 VOR FEDERAL AIRWAY 496 IS ADDED TO READ		
ROSAR, KY FIX	HOLSTON MOUNTAIN, TN VORTAC	6400	HOOPER BAY, AK VOR/ DME	ST MARYS, AK NDB	3500
§95.6333 VOR FEDERAL AIRWAY 333 IS AMENDED TO READ IN PART			§95.6510 VOR FEDERAL AIRWAY 510 IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC	KNOBB, AZ FIX	8000	EMMONAK, AK VOR/DME	ANVIK, AK NDB/DME	3900
KNOBB, AZ FIX	RADOM, AZ FIX		ANVIK, AK NDB/DME	ABEAR, AK FIX	*9000
	S BND	8000	*5500 - MOCA		
	N BND	11000	ABEAR, AK FIX	MC GRATH, AK VORTAC	*10000
RADOM, AZ FIX	FERER, AZ FIX		*6000 - MOCA		
	N BND	*12000	MC GRATH, AK VORTAC	*WINOR, AK FIX	
	S BND	*11000		NW BND	**4000
*8100 - MOCA				SE BND	**7000
				*8600 - MCA WINOR FIX, E BND	
§95.6350 VOR FEDERAL AIRWAY 350 IS AMENDED BY ADDING			**4000 - MOCA		
BETHEL, AK VORTAC	DAHLS, AK FIX	2000	WINOR, AK FIX	MIGAN, AK FIX	*10000
DAHLS, AK FIX	EMMONAK, AK VOR/DME	*3600	*8900 - MOCA		
*3000 - MOCA			MIGAN, AK FIX	KLART, AK FIX	*10000
EMMONAK, AK VOR/DME	NOME, AK VORTAC	3000	*8500 - MOCA		
			KLART, AK FIX	BIG LAKE, AK VORTAC	*6000
			*2500 - MOCA		
§95.6385 VOR FEDERAL AIRWAY 385 IS ADDED TO READ			§95.6528 VOR FEDERAL AIRWAY 528 IS AMENDED TO READ IN PART		
HOOPER BAY, AK VOR/ DME	EMMONAK, AK VOR/DME	4500	PHOENIX, AZ VORTAC	EAGUL, AZ FIX	*14500
EMMONAK, AK VOR/DME	UNALAKLEET, AK VORTAC	*3500	*9200 - MOCA		
*2800 - MOCA			EAGUL, AZ FIX	*PAYSO, AZ FIX	**16000
			*16000 - MRA		
			**9800 - MOCA		
			PAYSO, AZ FIX	ST JOHNS, AZ VORTAC	*13000
			*9800 - MOCA		

FROM TO MEA
§95.6552 VOR FEDERAL AIRWAY 552
 IS AMENDED TO READ IN PART

LAKE CHARLES, LA VORTAC	HATHA, LA FIX	*2000
*1400 - MOCA		
HATHA, LA FIX	LAFAYETTE, LA VORTAC	2800
LAFAYETTE, LA VORTAC	*GRICE, LA FIX	**2000
*4000 - MRA		
**1500 - MOCA		
GRICE, LA FIX	TIBBY, LA VORTAC	*2000
*1500 - MOCA		

§95.6562 VOR FEDERAL AIRWAY 562
 IS AMENDED TO READ IN PART

PHOENIX, AZ VORTAC	KNOBB, AZ FIX	8000
KNOBB, AZ FIX	RADOM, AZ FIX	
	S BND	8000
	N BND	11000
RADOM, AZ FIX	FERER, AZ FIX	
	N BND	*12000

FROM TO MEA
§95.6562 VOR FEDERAL AIRWAY 562—Continued

*8100 - MOCA	S BND	*11000
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§95.6567 VOR FEDERAL AIRWAY 567
 IS AMENDED TO READ IN PART

PHOENIX, AZ VORTAC	KNOBB, AZ FIX	8000
KNOBB, AZ FIX	RADOM, AZ FIX	
	S BND	8000
	N BND	11000
RADOM, AZ FIX	*FERER, AZ FIX	
	N BND	**12000
	S BND	**11000
	*14000 - MCA FERER FIX, NE BND	
	**8100 - MOCA	

FROM	TO	MEA	MAA
§95.7011 JET ROUTE NO. 11			
IS AMENDED TO READ IN PART			
TUCSON, AZ VORTAC	PHOENIX, AZ VORTAC	18000	45000
PHOENIX, AZ VORTAC	DRAKE, AZ VORTAC	18000	45000
§95.7018 JET ROUTE NO. 18			
IS AMENDED TO READ IN PART			
GILA BEND, AZ VORTAC	PHOENIX, AZ VORTAC	18000	45000
PHOENIX, AZ VORTAC	ST JOHNS, AZ VORTAC	18000	45000
§95.7019 JET ROUTE NO. 19			
IS AMENDED TO READ IN PART			
PHOENIX, AZ VORTAC	ZUNI, NM VORTAC	19000	45000
§95.7044 JET ROUTE NO. 44			
IS AMENDED TO READ IN PART			
PHOENIX, AZ VORTAC	WINSLOW, AZ VORTAC	18000	45000
§95.7065 JET ROUTE NO. 65			
IS AMENDED TO READ IN PART			
TRUTH OR CONSEQUENCES, NM VORTAC	PHOENIX, AZ VORTAC	#23000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
PHOENIX, AZ VORTAC	BLYTHE, CA VORTAC	18000	45000
§95.7092 JET ROUTE NO. 92			
IS AMENDED TO READ IN PART			
KLAMATH FALLS, OR VORTAC	MUSTANG, NV VORTAC	18000	45000
DRAKE, AZ VORTAC	PHOENIX, AZ VORTAC	18000	45000
PHOENIX, AZ VORTAC	STANFIELD, AZ VORTAC	18000	45000
§95.7102 JET ROUTE NO. 102			
IS AMENDED TO READ IN PART			
PHOENIX, AZ VORTAC	ZUNI, NM VORTAC	18000	45000
§95.7244 JET ROUTE NO. 244			

FROM	TO	MEA	MAA
§95.7244 JET ROUTE NO. 244—Continued			
IS AMENDED TO READ IN PART			
ZUNI, NM VORTAC	PHOENIX, AZ VORTAC	19000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-16			
IS AMENDED TO DELETE			
PHOENIX, AZ VORTAC	TUCSON, AZ VORTAC	38	PHOENIX
V-20			
IS AMENDED BY ADDING			
LAFAYETTE, LA VORTAC	NEW ORLEANS, LA VORTAC	51	LAFAYETTE
V-190			
IS AMENDED BY ADDING			
PHOENIX, AZ VORTAC	ST JOHNS, AZ VORTAC	70	PHOENIX
V-194			
IS AMENDED BY ADDING			
SABINE PASS, TX VOR/DME	LAFAYETTE, LA VORTAC	50	SABINE PASS
V-327			
IS AMENDED TO DELETE			
PHOENIX, AZ VORTAC	FLAGSTAFF, AZ VOR/DME	73	PHOENIX
V-440			
IS AMENDED TO READ IN PART			
MIDDLETON ISLAND, AK VOR/DME	ANCHORAGE, AK VOR/DME	95	MIDDLETON ISLAND
V-459			
IS AMENDED BY ADDING			
EMMONAK, AK VOR/DME	ST MARYS, AK NDB	40	EMMONAK

VOR FEDERAL AIRWAYS CHANGEOVER POINTS-CONT'D.

V-496

IS AMENDED BY ADDING

HOOPER BAY, AK VOR/DME ST MARYS, AK NDB 40 HOOPER BAY

V-510

IS AMENDED BY ADDING

ANVIK, AK NDB/DME MC GRATH, AK VORTAC 87 ANVIK

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
J-18			
IS AMENDED BY ADDING			
PHOENIX, AZ VORTAC	ST JOHNS, AZ VORTAC	88	PHOENIX

[FR Doc. 91-31114 Filed 12-27-91; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 247

[Amdt. No. 247-2]

RIN 2137-AC17

Direct Airport-to-Airport Mileage Records; Amendment**AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Final rule.

SUMMARY: This rule amends 14 CFR part 247 by removing all references to organizational components of the former Civil Aeronautics Board and replacing them with the responsible organizations within the Department of Transportation. This rule is strictly editorial in nature and reflects the transfer to the Department of the function of maintaining the official direct airport-to-airport mileage records, which had been previously maintained by the former Civil Aeronautics Board.

EFFECTIVE DATE: This final rule is effective on December 30, 1991.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Airline Statistics, DAI-1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4385 and 366-4383, respectively.

SUPPLEMENTARY INFORMATION: Part 247, Direct Airport-to-Airport Mileage Records, currently refers to various organizational components of the former Civil Aeronautics Board as the offices responsible for maintaining the up-to-date direct airport-to-airport mileage records that are used in carrying out the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended. Part 247 also refers to the "Official mileage record of the Board." With the sunset of the Civil Aeronautics Board on December 31, 1984, the responsibility for administering part 247 transferred to the Department of Transportation. This final rule amends part 247 by removing all references to the Civil Aeronautics Board and its organizational components and replacing them with the Department and its Research and Special Programs Administration's Office of Airline Statistics, which maintains the official direct airport-to-airport mileage records. Therefore, this rule provides, for the convenience of Federal, state, local, and private sector users, the name of the office within the Research and Special Programs Administration that may be directly contacted for information contained in the Department's direct

airport-to-airport official mileage record files.

This rule also amends the authority citation for part 247 that is contained in the Code of Federal Regulations. The citation is specifically amended to include a reference to (1) the legislation transferring the aviation data collection authority of the former Civil Aeronautics Board to the Department of Transportation and (2) the regulation assigning the responsibility for administering the collection and dissemination of aviation information to the Research and Special Programs Administration.

Effective Date

Since these amendments relate to the Departmental management and are purely editorial in nature, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, the organizational designation revisions that are contained in this rule are effective as of the date of publication of this final rule.

Rulemaking Analyses and Notices**DOT Regulatory Policies and Procedures**

This final rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it has no economic impact on the public; therefore, a full regulatory evaluation is not required.

Executive Orders**Executive Order 12291**

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, state or local governments, agencies or geographic regions. Furthermore, this final rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation would not affect air carrier reporting burden. Accordingly, a regulatory impact analysis is not required.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

12612 and it has been determined that this rulemaking action does not have any federalism implications that would warrant the preparation of a Federalism Assessment.

Executive Order 12630

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that this rulemaking action does not pose the risk of a taking of constitutionally protected private property.

Legislative Acts**Regulatory Flexibility Act**

I certify that this action will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. This final rule is editorial in nature and does not affect any air carriers.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 247

Official Direct Airport-to-Airport Mileages.

Accordingly, the Department of Transportation amends 14 CFR part 247, as follows:

PART 247—[AMENDED]

1. The authority for part 247 is revised to read as follows:

Authority: Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324); Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)); Pub. L. 98-443, October 4, 1984; 49 FR 50994, December 31, 1984.

2. Part 247 is revised to read as follows:

§ 247.1 Official mileage record of the Department of Transportation.

The direct airport-to-airport mileage record now maintained, and as hereafter amended or revised from time to time by

the Office of Airline Statistics of the Research and Special Programs Administration of the Department of Transportation in the regular performance of its duties, is hereby adopted as the official mileage record of the Department and the mileages set forth therein shall be used in all instances where it shall be necessary to determine direct airport-to-airport mileages pursuant to the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Department pursuant thereto.

Issued in Washington, DC on December 20, 1991

Travis P. Dungan,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 91-31078 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 911214-1314]

Revision of Commerce Control List; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule; Correction.

SUMMARY: This correction document makes a number of corrections to the Commerce Control List (CCL), Supplement No. 1 to 799.1 of the Export Administration Regulations (15 CFR parts 730-799) (EAR). The corrections made by this document clarify the scope of certain CCL entries and remove typographical errors that appeared in an interim rule that was published in the *Federal Register* on August 29, 1991 (56 FR 42824). That interim rule revised and renamed the Commodity Control List (now the Commerce Control List) in order to implement a total revision of the International Industrial List by the Coordinating Committee for Multilateral Export Controls (COCOM).

Most of the changes made by this document involve corrections of typographical errors such as misspellings and incorrect cross references. In a few instances, however, typographical errors in one or more of the technical parameters for certain CCL entries are corrected to reflect the appropriate control levels; these changes do not significantly alter the overall control levels of the affected entries and the impact of these changes on the number of items subject to

validated licensing requirements will be negligible.

This document also corrects the headings of a number of the software and technology entries in Category 9 (Propulsion Systems and Transportation Equipment). These corrections do not affect the licensing requirements that apply to software and technology for Category 9 items; they merely clarify the scope of the individual software and technology entries.

Finally, this document revises the GTDR paragraphs in a number of national security controlled software and technology entries to clarify that General License GTDR is not available for exports to Iran and Syria.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3856.

Accordingly, the interim rule, which was published in the *Federal Register* on August 29, 1991 (56 FR 42824), is corrected as follows:

§ 799.1 [Corrected]

1. On page 42829, in the second column, under ECCN 1A48B, the phrase "(e.g., aircraft, ship or other counterweights)" is corrected to read "(e.g., aircraft, ship, or other counterweights)" in lines 3 and 4 of Note 1.

2. On page 42830, in the first and second columns, under ECCN 1B01A, in the List of Items Controlled:

a. The word "fibres" is corrected to read "fibers" in line 3 of 1B01.d introductory text, in lines 2, 4, and 5 of 1B01.d.1, in line 5 of 1B01.d.2, and in lines 2 and 3 of 1B01.d.4; and

b. The word "fibre" is corrected to read "fiber" in line 6 of 1B01.d.1.

3. On page 42830, in the second column, under ECCN 1B02A, in the Requirements section, "CFW: No" is corrected to read "GFW: No".

4. On page 42831, in the first column, under ECCN 1B19A, in the Requirements section:

a. The reference "1A19.a" is corrected to read "1B19.a" in the GCT paragraph; and

b. The phrase "Yes, for 1A19.c only (see Advisory Note)" is corrected to read "No".

5. On page 42831, in the first column, under ECCN 1B19A, the List of Items controlled is corrected by removing 1B19.c and by removing the Advisory Note at the end of the entry.

6. On page 42831, in the second column, under ECCN 1B51E, in line 8 of the entry heading, the phrase "or aluminum alloys" is corrected to read

"or aluminum alloys, and such pressure sensing elements if supplied separately".

7. On page 42831, in the third column, under ECCN 1B70E, in the List of Items Controlled, the phrase "0.1 miligram" is corrected to read "0.1 milligram" in line 3 of 1B70.f.2.

8. On page 42831, in the third column, under ECCN 1B71E, in the Requirements section, the phrase "Supp. to part 778" is corrected to read "Supp. 5 to Part 778" in line 2 of the *Validated License Required* paragraph.

9. On page 42832, in the first column, under ECCN 1C01A, in the List of Items Controlled:

a. The phrase "absorbing frequencies exceeding $2\mu 10^8$ Hz but less than $3\mu 10^{12}$ Hz," is corrected to read "absorbing frequencies exceeding 2×10^8 Hz, but less than 3×10^{12} Hz," in lines 1 to 3 of 1C01.a introductory text;

b. The phrase "+15% of the center frequency" is corrected to read " $\pm 15\%$ of the center frequency" in line 6 of 'C01.a.3.a.1; and

c. The phrase "-15% of the center frequency" is corrected to read " $\pm 15\%$ of the center frequency" in line 4 of 1C01.a.3.a.2.

10. On page 42832, in the third column, under ECCN 1C02A, in the list of Items Controlled:

a. The phrase "material embargoed" is corrected to read "material controlled" in line 3 of 1C02.a.2 introductory text; and

b. The phrase "materials embargoed" is corrected to read "materials controlled" in line 2 of 1C02.b introductory text.

11. On page 42833, in the first column, under ECCN 1C02A, in the List of Items Controlled, the phrase "does not embargo" is corrected to read "does not control" in line 1 of the note immediately following 1C02.c.

12. On page 42833, in the third column, under ECCN 1C06A, in the List of Items Controlled, the phrase "(5,000 centistokes)" is corrected to read "(5, centistokes)" in line 3 of 1C06.b.2.

13. On page 42834, in the first and second columns, under ECCN 1C07A:

a. The phrase "'matrix' 'composite' materials" is corrected to read "'matrix' 'composite' materials" in line 3 of the ECCN heading; and

b. In the List of Items Controlled, the phrase "materials embargoed" is corrected to read "materials controlled" in line 4 of 1C07.e introductory text.

14. On page 42835, in the second column, under ECCN 1C18A, in the Requirements section, in the GFW paragraph, the phrase "Yes, see Advisory note" is corrected to read "Yes (Advisory Note only)".

15. On page 42835, in the third column, under ECCN 1C19A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, for 1C19.a, see Advisory Note 1; Yes for 1C19.b, see Advisory note 2" is corrected to read "Yes, for 1C19.a (Advisory Note 1 only); Yes, for 1C19.b (Advisory Note 2 only)".

16. On page 42839, in the second column, under ECCN 1E02A, in the List of Items Controlled, the word "materials" is corrected to read "'composite' structures, laminates or materials" in line 2 of 1E02.f.

17. On page 42840, in the second column, under ECCN 2A19A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes for 2A19.b (see Advisory Notes 1 and 2) and for 2A19.c (see Advisory Note 3)" is corrected to read "Yes for 2A19.b (Advisory Notes 1 and 2 only) and for 2A19.c (Advisory Note 3 only)".

18. On page 42840, in the second column, under ECCN 2A19A, in the List of Items Controlled:

a. The reference "6A19.a" is corrected to read "2A19.b" in line 8 of Advisory Note 1; and

b. The reference "6A19.c" is corrected to read "2A19.c" in line 5 of Advisory Note 3.

19. On page 42842, in the first column, under ECCN 2B01A, in the List of Items Controlled, the phrase "more axes than" is corrected to read "more axes that" in line 1 of 2B01.c.1.a.

20. On page 42842, in the third column, under ECCN 2B01A, in the List of Items Controlled, the word "workplace" is corrected to read "workpiece" in Note 1, paragraph c., line 1.

21. On page 42843, in the first column, under ECCN 2B01A, in the List of Items Controlled, the parenthetical phrase "(not letter)" is corrected to read "(not better)" in Note 3, paragraph c., line 2.

22. On page 42845, in the third column, under ECCN 2B09A, lines 2 and 3 in the heading of the ECCN are corrected by removing the phrase "and software therefor".

23. On page 42845, in the third column, under ECCN 2B18A, in the Requirements section, in the *GFW* paragraph, the parenthetical phrase "(see Advisory Note)" is corrected to read "(Advisory Note only)".

24. On page 42846, in the second column, under ECCN 2B40B, in the List of Items Controlled, the reference "9B27B" is corrected to read "9B26B" in line 2 of the Note at the end of the entry.

25. On page 42847, in the second column, under ECCN 2D02A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

26. On page 42856, in the first column, under ECCN 3A02A, in the List of Items Controlled:

a. The word "synthesiser" is corrected to read "synthesizer" in line 1 of 3A02.b.; and

b. The word "synthesised" is corrected to read "synthesized" in line 1 of 3A02.d introductory text.

27. On page 42857, in the third column, under ECCN 3A90C, "3A90C" is corrected to read "3A80C" in line 1 of the entry heading.

28. On page 42857, in the third column, under ECCN 3A91C, "3A91C" is corrected to read "3A81C" in line 1 of the entry heading.

29. On page 42858, in the first column, under ECCN 3A93F:

a. The *Validated License Required* paragraph is corrected by removing the parenthetical phrase "(see Note)" in line 3;

b. The word "No" is corrected to read "\$1,000 for Syria only" in the *GLV* paragraph; and

c. The Note at the end of the entry is removed.

30. On page 42858, in the second column, under ECCN 2B01A, in the List of Items Controlled:

a. The phrase "less \pm 2.5% across" is corrected to read "less than \pm 2.5% across" in line 2 of 3B01.a.1; and

b. The word "electron" is corrected to read "Electron" in line 1 of 3B01.d.2.b.

31. On page 42860, in the first column, under ECCN 3B91F, in the List of Items Controlled, the phrase "+ 1 micrometer" is corrected to read " \pm 1 micrometer" in line 2 of 3B91.b.1.m.1.

32. On page 42860, in the second column, under ECCN 3B91F, in the List of Items Controlled, the phrase "+ 0.25 micrometer" is corrected to read " \pm 0.25 micrometer" in line 2 of 3B91.b.2.f.2.

33. On page 42860, in the third column, under ECCN 3B91F, in the List of Items Controlled, the phrase "2.5 micrometer" is corrected to read "3.5 micrometer" in line 2 of 3B91.b.6a.

34. On page 42861, in the first column, under ECCN 3B91F, in the List of Items Controlled:

a. The reference "3B01 b.7.b." is corrected to read "3B91.b.7.b." in line 1 of Note 1 that follows 3B91.b.7.b.2; and

b. The reference "3B01 b.7.b." is corrected to read "3B91.b.7.b." in line 1 of Note 2 that follows 3B91.b.7.b.2.

35. On page 42861, in the third column, under ECCN 3C03A, the word "aluminium" is corrected to read "aluminum" in line 2 of the ECCN heading.

36. On page 42861, in the third column, under ECCN 3D01A, in the Requirements section, the word "Yes" is

corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

37. On page 42862, in the first column, under ECCN 3D02A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

38. On page 42862, in the first column, under ECCN 3D03A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

39. On page 42862, in the second column, under ECCN 3D90C, in the heading of the entry:

a. "3D90C" is corrected to read "3D80C" in line 1; and

b. The reference "3A90C and 3A91C" is corrected to read "3A80C and 3A81C" in line 3.

40. On page 42862, in the second column, under ECCN 3D91F, in the Requirements section, the word "No" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

41. On page 42862, in the third column, under ECCN 3E90C, in the heading of the entry:

a. "3E90C" is corrected to read "3E80C" in line 1; and

b. The reference "3A90C and 3A91C" is corrected to read "3A80C and 3A81C" in line 3.

42. On page 42862, in the third column, under ECCN 3E91F, in the Requirements section, the word "No" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

43. On page 42863, in the third column, under ECCN 4A03A, in the Requirements section, in the *GFW* paragraph, the phrase "See Advisory Notes 1 and 2" is corrected to read "Yes (Advisory Notes 1 and 2 only)".

44. On page 42866, in the first column, under ECCN 4E01A, the phrase "controlled by 4A, 4B, 4C, or NS or MT" is corrected to read "controlled by 4A, 4B, or 4C for NS or MT" in line 5 of the entry heading.

45. On page 42866, in the first column, under ECCN 4E02A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

46. On page 42869, in the first column, in line 1 of Note X, the word "ECs" is corrected to read "CEs".

47. On page 42869, in the third column, the section heading "Telecommunications" immediately following the Notice under the heading for Category 5 is corrected to read "I. Telecommunications".

48. On page 42870, in the first column, under ECCN 5A02A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see

Telecommunications Advisory Notes 1 and 5" is corrected to read "Yes (Telecommunications Advisory Notes 1 and 5 only)".

49. On page 42871, in the second column, under ECCN 5A05A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see Telecommunications Advisory Note 2" is corrected to read "Yes (Telecommunications Advisory Note 2 only)".

50. On page 42871, in the third column, under ECCN 5B01A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see Telecommunications Advisory Note 3" is corrected to read "Yes (Telecommunications Advisory Note 3 only)".

51. On page 42872, in the first column, under ECCN 5B02A, in the List of Items Controlled, the reference "5A02.a" is corrected to read "Telecommunications Category 5A" in line 3 of 5B02.b.

52. On page 42875, in the first column, the section heading "Information Security" immediately following N.B. 2, paragraph c., is corrected to read "II. Information Security".

53. On page 42876, in the second column, the section heading "Other Equipment, Materials, Software and Technology" immediately following Advisory Note 5 is corrected to read "III. Other Equipment, Materials, Software and Technology".

54. On page 42879, in the second column, under ECCN 6A02A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Notes 2 and 3 to Category 6)" is corrected to read "Yes (Advisory Notes 2 and 3 to Category 6 only)".

55. On page 42880, in the first column, under ECCN 6A02A, in the List of Items Controlled, the word "intertially" is corrected to read "inertially" in line 4 of 6A02.d.3.a.

56. On page 42880, in the second column, under ECCN 6A22B, in the List of Items Controlled, the word "nonometers" is corrected to read "nanometers" in lines 3 and 4 of 6A22.a.1.

57. On page 42882, in the first column, under ECCN 6A05A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Notes 7 and 8 to category 6)" is corrected to read "Yes (Advisory Notes 7 and 8 to Category 6 only)".

58. On page 42884, in the third column, under ECCN 6A08A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Note 9 to Category 6)" is corrected to read "Yes (Advisory Note 9 to Category 6 only)".

59. On page 42885, in the first column, under ECCN 6A08A, in the List of Items Controlled, the phrase "a 'pulse compression'" is corrected to read "A 'pulse compression'" in line 1 of 6A08.k.1.

60. On page 42886, in the third column, under ECCN 6C04A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Note 6 to Category 6)" is corrected to read "Yes (Advisory Note 6 to Category 6 only)".

61. On page 42887, in the second column, under ECCN 6D03A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

62. On page 42888, in the second column, under ECCN 6E03A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

63. On page 42893, in line 6 of the third column, under ECCN 8A01A, in the List of Items Controlled, paragraph b.2.b. is correctly designated as paragraph b.1.b.

64. On page 42894, in the first column, under ECCN 8A01A, in the List of Items Controlled, the phrase "or 40 knots" is corrected to read "of 40 knots" in line 4 of 8A01.h.

65. On page 42897, in the first column, in lines 1 and 2 of the Note immediately following the heading of Category 9A, the phrase "vehicles equipped with any controlled item" is corrected to read "controlled equipment that is vehicle mounted for convenience of transport".

66. On page 42897, in the second column, under ECCN 9A02A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (See Advisory Note to Category 9)" is corrected to read "Yes (Advisory Note, Category 9, only)".

67. On page 42897, in the third column, under ECCN 9A18A, in the List of Items Controlled, the phrase "ground equipment, n.e.s. developed" is corrected to read "ground equipment, n.e.s., developed" in line 5 of 9A18.c.

68. On page 42898, in the second column, under ECCN 9A93F:

a. The heading "Requirements" is added immediately following the heading of the entry; and

b. The phrase "Iran, Syria" is corrected to read "SZ, Iran, Syria, South Africa military and police" in the *Validated License Required* paragraph.

69. On page 42900, in the second column, under ECCN 9D01A, in lines 2 and 3 of the ECCN heading, the phrase "equipment or technology controlled by 9A, 9B, or 9E03" is corrected to read "equipment controlled by 9A01, 9A02, 9A03, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05,

9B06, 9B07, 9B08, or 9B09, or technology controlled by 9E03".

70. On page 42900, in the second column, under ECCN 9D02A, in lines 2 and 3 of the ECCN heading, the phrase "or controlled by 9A, 9B" is corrected to read "controlled by 9A01, 9A02, 9A03, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09".

71. On page 42900, in the second column, under ECCN 9D03A, in lines 3 through 5 of the ECCN heading, the phrase "propulsion systems controlled by 9A or equipment controlled by 9B" is corrected to read "propulsion systems controlled by 9A01, 9A02, or 9A03, or equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09".

72. On page 42900, in the second column, under ECCN 9D04, "9D04" is corrected to read "9D04A" in the heading of the ECCN.

73. On page 42900, in the third column, under ECCN 9D24B:

a. The phrase "Other 'software'" is corrected to read "'Software'" in line 1 of the ECCN heading;

b. The phrase "'missile' systems and equipment controlled by 9A and 9B" is corrected to read "propulsion systems and equipment controlled by 9A21, 9A22, 9B21, 9B23, 9B24, 9B25, 9B26, or 9B27, and 'software', n.e.s., specially designed or modified for the 'use' of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07" in lines 4 and 5 of the ECCN heading; and

c. The notation "NS, MT" is corrected to read "MT" in the *Reason for Control* paragraph in the Requirements section.

74. On page 42900, in the third column, under ECCN 9D94F, in the Requirements section, the word "No" is corrected to read "Yes, except Iran and Syria" in the *GTDU* paragraph.

75. On page 42900, in the third column, under ECCN 9D96G, in the Requirements section:

a. The phrase "SZ, Iran, Syria, South Africa military and police" is corrected to read "SZ, South Africa military and police" in the *Validated License Required* paragraph; and

b. The word "No" is corrected to read "Yes" in the *GTDU* paragraph.

76. On page 42901, in the first column, under ECCN 9E01A, in lines 3 through 6 of the ECCN heading, the phrase "equipment or 'software' controlled by 9A01.c, 9A18A, 9B, or 9D for national security and missile technology reasons" is corrected to read "equipment controlled by 9A01.c, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09, or 'software' controlled by 9D01, 9D02, 9D03, or 9D04".

77. On page 42901, in the first column, under ECCN 9E21B, in lines 2 and 3 of the ECCN heading, the phrase "items controlled by Category 9" is corrected to read "equipment controlled by 9A21, 9A22, 9B21, 9B23, 9B24, 9B25, 9B26, or 9B27, or 'software' controlled by 9D24, and technology for the 'use' of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07".

78. On page 42901, in the first column, under ECCN 9E02A, in lines 3 and 4 of the ECCN heading, the phrase "equipment controlled by 9A01.c or 9B" is corrected to read "equipment controlled by 9A01.c, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09".

79. On page 42903, in the second column, under ECCN 0E96G, under the Requirements section, the word "No" is corrected to read "Yes" in the GTDU paragraph.

80. On page 42903, in the second column, in Supplement No. 2 to § 799.1 (General Technology and Software Notes), in lines 17 through 19 of the General Technology Note, the phrase "General Licenses G-DEST, GUS, GCC, G-TEMP, GFW or GCT, or that were exported under a validated export license" is corrected to read "General Licenses or that are exported under a validated export license."

81. On page 42904, in the first column, in Supplement No. 3 to § 799.1 (Definitions), in line 6 of the definition *Asynchronous transfer mode (ATM)* (Cat. 5), this parenthetical phrase "(CCITT Recommendation L.113)" is corrected to read "(CCITT Recommendation L.113)".

Dated: December 19, 1991.

James M. LeMunyon,
Deputy Assistant Secretary for Export
Administration.

[FR Doc. 91-30658 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Change of Address

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions, 16 CFR part 1000, as published at 56 FR 30495, July 3, 1991 and amended 56 FR 46235, September 11, 1991, to include full 9 digit postal zip codes for its principal facilities.

EFFECTIVE DATE: December 30, 1991.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207-0001.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301-504-0980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the *Federal Register*. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and Functions
(Government agencies).

Accordingly, 16 CFR Part 1000 is amended as follows:

1. The authority citation for Part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

§ 1000.4 [Amended]

2. Section 1000.4 is amended by revising the zip code in paragraph (a) from "20207" to "20207-0001", by revising the zip code in paragraph (b)(1) from "60604-1604" to "60604-1601", by revising the zip code in paragraph (b)(2) from "10048-0950" to "10048-0950", and by revising the zip code in paragraph (b)(3) from "9411-2390" to 94111-2390.

Dated: December 20, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety
Commission.

[FR Doc. 91-30973 Filed 12-27-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Chorionic Gonadotropin for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug

application (NADA) filed by Intervet America, Inc. The NADA provides for the intramuscular use of reconstituted chorionic gonadotropin in cows for the treatment of nymphomania (frequent or constant heat) due to cystic ovaries.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: Intervet America, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed NADA 140-927 which provides for the intramuscular use of reconstituted, freeze-dried chorionic gonadotropin in cows for the treatment of nymphomania (frequent or constant heat) due to cystic ovaries. The NADA is approved as of November 22, 1991, and 21 CFR 522.1081 is amended by adding paragraph (a)(2)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Under the Generic Animal Drug and Patent Term Restoration Act of 1988, this approval does not qualify for an exclusivity period under section 512(c)(2)(F) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)) because the active ingredient in this product has been approved under section 512(b) of the act for the same indication at the same dose in another NADA.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1081 is amended by adding paragraph (a)(2)(iii) to read as follows:

§ 522.1081 Chorionic gonadotropin for injection; chorionic gonadotropin suspension.

(a) * * *

(2) * * *

(iii) No. 057926 for use of 10,000 U.S.P. units intramuscularly.

* * * * *

Dated: December 11, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91-31014 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trenbolone Acetate and Estradiol in Combination

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of trenbolone acetate and estradiol in combination in subcutaneous ear implants for increased rate of weight gain and improved feed efficiency in feedlot steers.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT:

Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8638.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, filed NADA 140-897 which provides for subcutaneous ear implantation of pellets

containing 120 milligrams (mg) of trenbolone acetate and 24 mg of estradiol for increased rate of weight gain and improved feed efficiency in feedlot steers. The NADA is approved as November 27, 1991, and the regulations are amended by adding new 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA is amending 21 CFR 556.240 and removing 21 CFR 556.250. The tolerance is revised to reflect that concentrations of estradiol are given in terms of its activity and not in terms of the particular ester. Therefore, § 556.250 *Estradiol monopalmitate* is removed.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 27, 1991, because new clinical or field investigations (other than bioequivalence or residue studies) were essential to the approval of the application and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2477 is added to read as follows:

§ 522.2477 Trenbolone acetate and estradiol in combination.

(a) *Specifications.* Each pellet for implanting contains 20 milligrams of trenbolone acetate and 4 milligrams of estradiol.

(b) *Sponsor.* See No. 012799 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.240 and 556.739 of this chapter.

(d) *Conditions of use—(1) Amount.* 120 milligrams of trenbolone acetate and 24 milligrams of estradiol (6 pellets) per animal.

(2) *Indications for use.* For increased rate of weight gain and improved feed efficiency in feedlot steers.

(3) *Limitations.* Implant subcutaneously in ear only. Do not use in animals intended for subsequent breeding or in dairy animals.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.240 is amended by revising the heading and introductory text to read as follows:

§ 556.240 Estradiol and related esters.

No residues of estradiol, resulting from the use of estradiol or any of the related esters, are permitted in excess of the following increments above the concentrations of estradiol naturally present in untreated animals:

* * * * *

§ 556.250 [Removed]

5. Section 556.250 *Estradiol monopalmitate* is removed.

Dated: December 20, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-30103 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 602**

(T.D. 8384)

RIN 1545-AP82

Certification of Enhanced Oil Recovery Projects**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document contains temporary regulations that provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that a project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the *Federal Register*.

DATES: These regulations are effective on January 1, 1991 and generally apply to taxable years beginning after December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, (202) 566-4919 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information requirement contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1292. The estimated average annual burden per respondent is 73 hours.

These estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

For further information on this collection of information requirement, where to submit comments on this requirement, the accuracy of the estimated burden, and where to submit suggestions for reducing this burden, please refer to the preamble to the

cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register*.

Background

This document amends the Income Tax Regulations (26 CFR part 1) to provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that a project meets the definition of a qualified enhanced oil recovery project under section 43 of the Internal Revenue Code. The temporary regulations reflect the addition of section 43(c)(2)(B) to the Code by section 11511(a) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

Explanation of Provisions

Section 43(c)(2)(B) provides that a project is not treated as a qualified enhanced oil recovery project unless the operator submits a certification at the time and in the manner prescribed by the Secretary. Section 1.43-3T specifies the certification requirements and is being issued as a temporary regulation, effective for taxable years beginning after December 31, 1990. For the first year in which the enhanced oil recovery credit (the "credit") is allowable with respect to a project, the operator, or any operating mineral interest owner designated by the operator ("designated owner"), must submit a petroleum engineer's certification. The temporary regulations require relatively detailed information to be filed in a project's first year. For subsequent years in which the credit is allowable, the operator or designated owner must certify that the project is being implemented substantially in accordance with the petroleum engineer's certification.

The petroleum engineer's certification and the annual operator's certification must be submitted to the Internal Revenue Service Center, Austin, Texas, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return. A failure by the operator or designated owner to timely file a petroleum engineer's certification or an annual operator's certification will not preclude taxpayers from claiming the credit; however, the credit with respect to any project will be allowed only after the appropriate certifications are submitted.

Upon the termination of a qualified enhanced oil recovery project, a notice of project termination must be submitted to the Internal Revenue Service Center, Austin, Texas, not later than the date prescribed by law (including extensions)

for filing the operator's or designated owner's federal income tax return for the year in which the project terminates. The notice of project termination is needed to assist the Internal Revenue Service in ensuring that taxpayers do not continue to claim the credit with respect to a terminated project.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.37-1 through 1.44A-4

Credits, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, parts 1 and 602, are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.43-3T also issued under 26 U.S.C. 43(c)(2)(B) * * *

Par. 2. New § 1.43-3T is added to read as follows:

§ 1.43-3T Certification (Temporary).

(a) *Petroleum engineer's certification of a project*—(1) *In general.* A petroleum engineer must certify, under penalties of perjury, that an enhanced oil recovery project meets the requirements of section 43(c)(2)(A). A petroleum engineer's certification must be submitted for each project. The petroleum engineer certifying a project must be duly registered or certified in any state.

(2) *Timing of certification.* The operator of an enhanced oil recovery project or any other operating mineral interest owner designated by the operator ("designated owner") must submit a petroleum engineer's certification to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the first taxable year for which the enhanced oil recovery credit (the "credit") is allowable. The operator may designate any other operating mineral interest owner (the "designated owner") to file the petroleum engineer's certification.

(3) *Content of certification*—(i) *In general.* A petroleum engineer's certification must contain the following information—

(A) The name and taxpayer identification number of the operator or the designated owner submitting the certification;

(B) A statement identifying the project, including its geographic location;

(C) A statement that the project involves a tertiary recovery method (as defined in section 43(c)(2)(A)(i)) and a description of the process used, including—

(1) A description of the implementation and operation of the project sufficient to establish that it is implemented and operated in accordance with sound engineering practices and

(2) The date on which the first injection of liquids, gases, or other matter occurred or is expected to occur;

(D) A statement that the application of a qualified tertiary recovery method or methods is expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered, including—

(1) Data on crude oil reserve estimates covering the project area with and without the enhanced oil recovery process,

(2) Production history prior to implementation of the project and estimates of production after production of the project, and

(3) An adequate delineation of the reservoir, or portion of the reservoir, from which the ultimate recovery of crude oil is expected to be increased as a result of the implementation and operation of the project; and

(E) A statement that the petroleum engineer believes that the project is a qualified enhanced oil recovery project within the meaning of section 43(c)(2)(A).

(ii) *Additional information for significantly expended projects.* The petroleum engineer's certification for a project that is significantly expanded must in addition contain—

(A) If the expansion affects acreage that was substantially unaffected by a previously implemented project, a precise delineation of the acreage affected by the previously implemented project;

(B) If the expansion affects a reservoir that was unaffected by a previously implemented project, a precise delineation of the reservoir affected by the previously implemented project; or

(C) If the expansion involves the implementation of an enhanced oil recovery project more than 36 months after the termination of a qualified tertiary recovery method that was applied before January 1, 1991, the date on which the previous tertiary recovery method terminated and an explanation of the data or assumptions relied upon to determine the termination date.

(b) *Operator's continued certification of a project*—(1) *In general.* For each taxable year following the taxable year for which the petroleum engineer's certification is submitted, the operator or designated owner must certify, under penalties of perjury, that an enhanced oil recovery project continues to be implemented substantially in accordance with the petroleum engineer's certification submitted for the project. An operator's certification must be submitted for each project.

(2) *Timing of certification.* The operator or designated owner of an enhanced oil recovery project must submit an operator's certification to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for any taxable year after the taxable year for which the petroleum engineer's certification is filed.

(3) *Content of certification.* An operator's certification must contain the following information—

(i) The name and taxpayer identification number of the operator or the designated owner submitting the certification;

(ii) A statement identifying the project, including its geographical location and the date on which the petroleum engineer's certification was filed;

(iii) A statement that the project continues to be implemented substantially in accordance with the petroleum engineer's certification (as described in paragraph (a) of this section) submitted for the project; and

(iv) A description of any significant change or anticipated change in the information submitted under paragraph (a)(3) of this section, including a change in the date on which the first injection of liquids, gases, or other matter occurred or is expected to occur.

(c) *Notice of project termination*—(1) *In general.* If the application of a tertiary recovery method is terminated, the operator or designated owner must submit a notice of project termination to the Internal Revenue Service.

(2) *Timing of notice.* The operator or designated owner of an enhanced oil recovery project must submit the notice of project termination to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the taxable year in which the project terminates.

(3) *Content of notice.* A notice of project termination must contain the following information—

(i) The name and taxpayer identification number of the operator or the designated owner submitting the notice;

(ii) A statement identifying the project, including its geographical location and the date on which the petroleum engineer's certification was filed; and

(iii) The date on which the application of the tertiary recovery method was terminated.

(d) *Failure to submit certification.* If a petroleum engineer's certification (as described in paragraph (a) of this section) or an operator's certification (as described in paragraph (b) of this section) is not submitted in the time or manner prescribed by this section, the credit will be allowed only after the appropriate certifications are submitted.

(e) *Effective date.* Section 1.43-3T is effective for taxable years beginning after December 31, 1990.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

Par 4, Section 602.101(c) is amended by adding the following citation:

"§ 1.43-3T(a)(3)....1545-1292 and § 1.43-3T(b)(3)....1545-1292".

Approved:

December 16, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-30873 Filed 12-27-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[T.D. 8386]

RIN 1545-A095

Imposition of Penalty for Failure To Comply With Information Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6721, which imposes a penalty for failure to file correct information returns, section 6722, which imposes a penalty for failure to furnish correct payee statements, section 6723, which imposes a penalty for failure to comply with other reporting requirements, and section 6724, which provides that such penalties may be waived for reasonable cause. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1989. The regulations affect all persons that are required to file information returns with the Internal Revenue Service, furnish statements to payees, or comply with other Reporting Requirements and are necessary to provide them with guidance needed to comply with these changes.

DATES: Effective dates: These regulations are effective January 1, 1990.

Application: These regulations apply to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC: CORP:T) (202-377-9344, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301), which provide rules under sections 6721 through 6724 of the Internal Revenue Code of 1986 (the "Code"), relating to the imposition of penalties for failure to comply with certain information reporting requirements. Code sections 6721 through 6724 were amended by the Omnibus Budget Reconciliation Act of 1989 ("OBRA 1989") (Pub. L. No. 101-239, 103 Stat. 2106) and are effective for information returns, payee statements, and certain other documents the due date for which (determined without regard to extensions) is after December 31, 1989. The final regulations provide a special transitional rule for information returns, payee statements, and certain other documents required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.

On February 21, 1991, the **Federal Register** published a notice of proposed rulemaking (56 FR 7001) by cross reference to temporary regulations published the same day in the **Federal Register** (56 FR 6969) under Code sections 6721 through 6724. The preamble to the temporary regulations contains an explanation of the temporary and proposed rules. A public hearing was held on September 9, 1991. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision, and the temporary regulations are removed.

Explanation of Statutory Provisions

Code section 6721(a) imposes a penalty of \$50 for every information return with respect to which there is a failure to file timely or a failure to include correct and complete information. If an information return is filed both late and with incorrect or incomplete information, not more than one penalty is imposed with respect to the return. Inconsequential errors and omissions do not constitute failures to include complete and correct information. Section 6721(b) provides a time-sensitive tiered penalty structure under which the \$50 penalty is reduced

to \$15 if the filer corrects the failure within 30 days of the required filing date and to \$30 if a failure is corrected after the end of such 30-day period but on or before August 1 of the year in which the return is required to be filed (hereinafter August 1). Aggregate penalties for the filing of late or incorrect information returns in any calendar year may not exceed certain limits. Penalties for failures subject to the first-tier \$15 penalty are capped at \$75,000; penalties for failures subject to the second-tier \$30 penalty are capped at \$150,000; and the combined penalties for all failures are capped at \$250,000. Lower limits apply to certain small businesses. Code section 6721(d).

Code section 6721(c) provides a *de minimis* exception under which a limited number of returns containing incorrect or incomplete information are treated as having been filed with the correct and complete information if the errors or omissions are corrected by August 1. The *de minimis* exception does not apply to the penalty for late filing. Relief under the *de minimis* exception is available for the greater of 10 returns or one-half of one percent of the total number of returns the filer is required to file during the calendar year.

Code section 6721(e) provides that if failures are due to intentional disregard of the information reporting requirements, higher penalty amounts are imposed for each such failure, and the reduced penalties under the tiered system, the limitations on aggregate penalties, and the *de minimis* rules do not apply.

Code section 6722 imposes a penalty of \$50 for every payee statement (up to a maximum of \$100,000 for any calendar year) with respect to which there is a failure to furnish timely or a failure to include correct and complete information. As with information returns, a failure to provide incomplete or incorrect information does not encompass inconsequential errors and omissions, and higher penalties apply if a failure is due to intentional disregard of the requirement to furnish timely a payee statement.

Code section 6723 imposes a \$50 penalty (up to a maximum of \$100,000) for every failure to comply timely with certain specified information requirements, including the requirement under section 6050K(c)(1) that a transferor partner notify the partnership of an exchange of a partnership interest, the requirement that a person provide his or her taxpayer identification number (TIN), or the TIN of another to the Internal Revenue Service or to other persons in specified circumstances. As

with information returns, a failure to provide correct and complete information does not encompass inconsequential errors and omissions.

Code section 6724(a) provides that the penalties imposed by sections 6721, 6722, and 6723 will be waived if the filer demonstrates that the failure was due to reasonable cause and not to willful neglect.

Response To Public Comments

Section 301.6721-1—Failure To File Correct Information Returns

Inconsequential Errors and Omissions

Section 301.6721-1T(c) of the temporary regulations provides that inconsequential errors and omissions are not considered errors, and sets forth a list of errors that are never inconsequential. A number of commentators recommended changes in the rule regarding inconsequential errors and omissions, including the removal of an example which suggested that an error in a payee address is never considered inconsequential. The Service has concluded that the list of errors that are never considered inconsequential reflects the needs and operation of its processing system and matching programs. Therefore, the list has not been altered. The incorrect address example has been removed, however, because an incorrect payee address may or may not be inconsequential, depending upon other information on the filed return. It was not clear in the example why the error in the address hindered the processing of the return. Deletion of the example does not imply, however, that in appropriate circumstances the Service may not impose a penalty for an incorrect address.

Returns Not Due on February 28

Section 301.6721-1T (b)(6) and (d)(4) of the temporary regulations excludes returns not required to be filed on February 28 from the application of the \$30 tier of the phased penalty and from the *de minimis* rule. Certain of these returns, such as the Form 8300 on which persons report cash transactions in excess of \$10,000, have required filing dates that are linked to the date of a transaction. In such cases, correction of erroneous returns by August 1 has limited, if any, practical effect. Commentators pointed out that because the August 1 correction date may be meaningful for filers of Form 1042S, which is required to be filed on March 15, Form 1042S filers should benefit from these rules. The final regulations adopt this suggestion. The final regulations also clarify that all information returns

required to be filed during the calendar year are taken into account in calculating the number of returns subject to the *de minimis* rule, regardless of whether the returns themselves are subject to relief under the rule.

Other Comments

Section 301.6721-1T(f)(3) of the temporary regulations sets forth the facts and circumstances that are considered in determining whether a failure is due to intentional disregard of the information reporting requirements. One commentator recommended that the final regulations clarify that, subject to the special rules for magnetic media reporting, these facts and circumstances include a filer's economic decision to incur the penalty rather than bear the costs of complying with the applicable information reporting requirements. This recommendation applies with respect to both the filing of information returns and the furnishing of payee statements. The legislative history to OBRA 1989 expressly includes this circumstance as a basis for finding intentional disregard of the reporting requirements. H.R. Rep. No. 247, 101st Cong., 1st Sess. 1384 (1989). Therefore, the final regulations incorporate this recommendation.

Section 301.6721-1T(g)(6) defines the term "filer" as "not ordinarily includ[ing] a transfer agent or paying agent of the filer." Several commentators asked that the definition be clarified to indicate the circumstances in which a transfer agent might be considered a filer. The final regulations make clear that the filer of an information return is the person who is required to file under the applicable information reporting rules.

Section 301.6722-1—Failure To Furnish Correct Payee Statements

Section 301.6722-1T(a) of the temporary regulations requires that correct and complete payee statements be furnished timely. One commentator asked that the regulations provide special guidance for brokers holding shares of a regulated investment company in street name. In such cases, persons obligated to furnish correct and complete payee statements may receive the necessary information too late to comply timely with this obligation. Because Code section 6722 makes no provision for corrections made after the date the statement is required to be furnished, the final regulations do not adopt the special rules requested. Nevertheless, penalties imposed for failure to furnish timely correct and complete payee statements may be waived if the filer demonstrates that the

failure is due to the filer's inability to obtain necessary information from a person on whom the filer must rely to furnish correct and complete payee statements. See the discussion of reasonable cause, below.

Section 301.6723-1—Failure To Comply with Specified Information Reporting Requirements

Section 301.6723-1T(a) of the temporary regulations sets forth the specified information reporting requirements to which the penalty may apply and states that failures subject to the penalty include: (1) A failure to comply timely with such a requirement; and (2) a failure to provide correct and complete information. The temporary regulations provide further that multiple penalties may be imposed with respect to a document with multiple failures, but that only one penalty is imposed for each discrete failure regarding such document. One commentator asked that the final regulations clarify that only a single penalty may be imposed with respect to any specified document. The final regulations make clear that if a return would be subject to a penalty because, with respect to any one specified reporting requirement, the required information is both late and incorrect or incomplete, only a single penalty is imposed. Section 301.6723-1T(b) Example 1 shows, however, that if a single document contains failures to comply with more than one specified information reporting requirement or if on a single document there are multiple instances of a failure to comply with a specified information reporting requirement (such as reporting the TIN of a dependent), a penalty is imposed for each such requirement with respect to which a failure occurs.

Section 301.6724-1—Reasonable Cause

Under Code section 6724, a penalty imposed under sections 6721-6723 may be waived if the failure was due to reasonable cause and not willful neglect. Section 301.6724-1T(a)(2) of the temporary regulations provides that reasonable cause is present if the filer establishes that either (1) there are significant mitigating factors for the failure or (2) the failure arose from events beyond the filer's control. The filer must establish further that it acted in a responsible manner both before and after the failure occurred.

Significant Mitigating Factors

Under § 301.6724-1T(b) of the temporary regulations, significant mitigating factors include, but are not limited to, the following: (1) the filer is a

first-time filer of the particular type of return or payee statement with respect to which the penalty arises; or (2) the filer has an established history of compliance with the information reporting requirement with respect to which the failure occurs. In determining a filer's history of compliance, the filer's prior penalty history and the filer's success in reducing its error rate from year to year are taken into account. In response to commentators' suggestions, the final regulations provide that, for purposes of determining a filer's prior penalty history, penalties that were self-assessed under provisions amended or repealed by OBRA 1989 are not treated as penalties incurred by the filer.

A number of commentators asked that the final regulations adopt a "safe harbor" under which a filer that has at least a 95 percent accuracy rate when matched against the information on records maintained by the Service would be deemed to have demonstrated a history of compliance. The final regulations do not adopt this recommendation because of the serious impediments it would present for the effectiveness of the Service's matching programs. First, a "safe harbor" standard would reduce the incentive for filers to improve their accuracy rate beyond the safe-harbor threshold. This would undermine the matching programs that depend on the Service's receiving the best possible information. Second, excusing five percent of the returns required to be filed annually from the penalty system would eliminate a significant number of returns from the matching programs every year.

Several commentators suggested that a filer's maintenance of a well-designed internal system for complying with information reporting requirements should satisfy the significant mitigating factors requirement. This suggestion would substitute the quality of the filer's efforts to comply for the quality of the filer's compliance results. The legislative history of Code section 6724 considered an established history of compliance in determining whether reasonable cause is present. It supports, however, only criteria based on compliance results for demonstrating that significant mitigating factors exist. Because the Service must rely on filers to provide the best possible information for use in its matching programs, the final regulations do not adopt this suggestion.

Other commentators focused on additional circumstances that should constitute significant mitigating factors. Commentators requested similar expansions of the circumstances that should be treated as "events beyond the

filer's control" (see below). The regulations make clear that both the significant mitigating factors and the applicable criteria for establishing an event beyond the filer's control are not exclusive. Therefore, it is neither necessary nor useful to provide additional possible fact patterns regarding significant mitigating factors or events beyond a filer's control in the final regulations.

Events Beyond the Filer's Control

Section 301.6724-1T(c)(1) of the temporary regulations sets forth a non-exclusive list of events or circumstances that will be treated as events beyond the filer's control for purposes of establishing reasonable cause. A discussion of the comments on the list follows.

Unavailability of Filer's business records.

Under § 301.6724-1T(c)(2) of the temporary regulations, the unavailability of the filer's business records is an event beyond the filer's control if the records are unavailable for a two-week period prior to the required filing date of the return and the unavailability is due to a supervening event, such as a fire or other casualty, a statutory or regulatory change, or the unavoidable absence of the person solely responsible for filing. Commentators noted that the two-week requirement was unnecessarily rigid and should be modified to take into account differing situations. The final regulations adopt this suggestion.

Undue economic hardship relating to magnetic media filing. Section 301.6724-1T(c)(3)(iv) of the temporary regulations provides another circumstance that constitutes an event beyond the filer's control. This is a filer's inability to file on magnetic media because of undue economic hardship. Undue economic hardship is established only if the filer attempts, at least 90 days before the required filing date, to contract out the magnetic media filing and is unable to do so because of prohibitive cost. Ordinarily, a filer may not claim undue economic hardship in more than one year because the Service's acceptance of information on "floppy" disks should put the capability of complying with the magnetic media requirements within the reach of any person filing more than 250 information returns of any one type.

One commentator argued that the 90-day period should be shortened. The Service agrees that the 90-day period may be overlong in light of common business practices. Accordingly, the final regulations adopt a 45-day minimum period in place of the 90-day minimum period. Another commentator

argued that the one-year only limitation is contrary to legislative intent as disclosed in the legislative history, which contemplates "multi-year exemptions" from the magnetic media requirements. H.R. Rep. No. 247, 101st Cong., 1st Sess., 1386 (1989). The pertinent language from that report states that the Service should take into consideration "other instances of undue hardship, such as temporary equipment breakdowns or destruction of magnetic media equipment in granting one-year or multi-year exemptions." The one-year limitation relating to a claim of undue economic hardship does not prevent a filer from establishing that records are unavailable due to equipment malfunction or destruction in as many years as the facts will support. Thus, the one-year limitation is consistent with the legislative history and is retained in the final regulations.

Actions of the Internal Revenue Service. Section 301.6724-1T(c)(4) of the temporary regulations provides that a filer's reasonable reliance on erroneous written information from the Service constitutes an event beyond the filer's control. One commentator asked that the written information upon which a filer may rely in establishing such reasonable reliance be expanded to include publications and forms instructions. The regulations already provide for filer reliance on such guidance. See §§ 301.6721-1T(a)(2)(ii) and 301.6722-1T(a)(2)(ii). Therefore, the final regulations retain the rule in the temporary regulations. However, the language of the regulation is modified to provide clarity.

Actions of an agent. Under § 301.6724-1T(c)(5) of the temporary regulations, an event beyond the filer's control can arise from the filer's contracting with an agent to perform the filing of information returns or the furnishing of the payee statements. The temporary regulations require that the filer establish that it contracted sufficiently in advance of the required filing date to permit timely filing; that it monitored the agent's efforts to perform; and that the agent can demonstrate that an event beyond the agent's control prevented timely correct filing.

Commentators asked that the requirement that filers monitor their agents be deleted because it is not consistent with ordinary business practices. The final regulations adopt this suggestion, and require instead that the filer exercise reasonable business judgment in selecting its agent.

Several commentators recommended that the requirement that the agent demonstrate that the failure was due to

an event beyond its control be deleted because the filer does not control the agent. Another commentator suggested that the requirement not be deleted, but rather that the agent's ability to demonstrate significant mitigating factors also be taken into account. Because the Service believes that the mere act of hiring an agent should not insulate a filer from penalties, it has not adopted the first recommendation. The Service has concluded that it is appropriate to take into account the agent's ability to demonstrate the presence of significant mitigating factors. Therefore, the final regulations incorporate the requirement that the agent establish the presence of either an event beyond the agent's control or significant mitigating factors.

Actions of the payee or other person. Section 301.6724-1T(c)(6) of the temporary regulations provides that an event beyond the filer's control can result from the failure of the payee (or other person required to provide necessary information to the filer) to provide timely correct information to the filer. Commentators requested clarification that an inability to obtain information from any person, including upstream payors who may not be required to provide information until after the required filing date of the filer's information returns or payee statements, qualify as "action of the payee or other person" in establishing reasonable cause. The final regulations adopt this clarification.

Responsible Manner

Under § 301.6724-1T(d)(1) of the temporary regulations, every filer seeking a waiver for reasonable cause must establish that it acted in a responsible manner both before the failure (by prudently determining its filing obligations and handling its account obligations and by taking steps to avoid or prevent the failure where possible) and after the failure (by correcting the failure promptly, generally within 30 days of the time correction becomes possible).

One commentator argued that the 30-day correction period is onerous and can result in daily filings of corrections. For instance, if failures are discovered on a daily basis, the filer must correct the error almost on a daily basis to ensure that its corrections are made promptly within 30 days. The Service believes that the 30-day period provided in the regulations should require filing of corrections no more frequently than once every 30 days. Therefore, the final regulations modify the general rule that prompt corrections ordinarily occur within 30 days by permitting corrections

to be made as part of a general submission of corrections no less frequently than once every 30 days.

Several commentators recommended that the final regulations clarify that the correction requirement of § 301.6724-1T(d)(1)(ii)(D) of the temporary regulations applies only to the information returns or payee statements filed for the year with respect to which the filer is notified under Code section 6721. Except as noted below with respect to incorrect TINs (which are not required to be corrected), the temporary regulations clearly provide that a filer may establish rectification of a failure on a document for which a penalty is imposed by showing correction of the document (i.e., the information return, the payee statement, or document on which a specified information requirement must be satisfied) with respect to which the failure occurs. Thus, there is no indication that the filer must show correction of other documents in order to obtain a waiver. The final regulations, therefore, retain the rule in the temporary regulations. Filers, however, who have errors on returns or other documents for which the statute of limitations has not expired may want to rectify those errors for potential examination or audit.

Certain information reporting requirements prohibit the filer from altering information reported on the required filing date of the information return. See § 1.6045-4(i)(5) of the Income Tax Regulations. The final regulations also clarify that the requirement to correct promptly does not apply in the case of such a requirement.

Special Rules for Taxpayer Identification Numbers (TINs)

Under § 301.6724-1T(e) and (f) of the temporary regulations, a filer seeking to establish that it acted in a responsible manner with respect to failures resulting from missing or incorrect TINs must show that (1) it solicited the TIN at the time the payee's account was opened (or the transaction giving rise to the reporting requirement occurred) and (2) if the TIN was missing or the filer was notified that the TIN was incorrect, it made at least two additional solicitations at prescribed times after the initial solicitation. These solicitations may be conducted by mail or, under certain circumstances, by telephone. If a filer fails to make the required solicitations at the prescribed times, it may satisfy the solicitation requirement by performing solicitations in the proper manner in two consecutive subsequent years. Under § 301.6724-1T(h)(2) of the regulations, special transitional rules apply to returns

required to be filed after December 31, 1989, and on or before April 22, 1991.

One commentator noted that reportable payments made to fiduciary and nominee accounts are temporarily exempt from backup withholding due to an incorrect TIN under Code section 3406(a)(1)(B) and correlatively from the solicitation for a correct TIN (B-notice mailings). This commentator argued that filers of returns reporting such payments should therefore not be subject to a penalty under section 6721 for the failure to include the correct TIN on the return. The preamble explaining § 35a.3406-1(a)(3)(x) of the Temporary Employment Tax Regulations, which provides this exemption from backup withholding for fiduciary and nominee accounts, makes clear that filers continue to be subject to penalties imposed by section 6721. 55 FR 39400 (September 27, 1990). It would be inappropriate, therefore, to exempt information returns that report payments to such accounts from the penalty imposed by section 6721. Nevertheless, in view of the exemption from backup withholding provided for these accounts, it is appropriate to permit payors to satisfy the less burdensome solicitation requirements under § 301.6724-1T(f)(3) of the Regulations on Procedure and Administration that apply to filers that have not received a notice of an incorrect TIN pursuant to section 3406(a)(1)(B). These requirements permit solicitations by telephone and generally provide a longer period within which the filer may make the solicitations. Therefore, the final regulations clarify that filers for such fiduciary accounts may satisfy the solicitation requirements applicable to non-backup-withholding type of accounts.

Several commentators requested clarification of requirements to solicit a TIN under § 301.6724-1T(e)(1)(vi) and (f)(5)(i) of the temporary regulations. These provisions provide, in part, that if the information reporting requirement under which an information return is filed sets forth specific requirements relating to the time or manner in which TINs must be solicited, the filer must satisfy those specific requirements to meet the solicitation requirements under the temporary regulations. The final regulations make clear that the specific solicitation requirements of timing (i.e., within a certain number of days) and manner (i.e., by mail or otherwise) imposed under a particular information reporting requirement must be satisfied. It is not necessary that other substantive requirements (such as the request for a certified TIN or the requirement that a

payor search for payee accounts other than the one to which the penalty notice relates) be satisfied.

In order to act in a responsible manner with respect to TINs, the solicitation requirements under §§ 301.6724-1T (e)(1)(iv) and (f)(1)(iv) of the temporary regulations require a filer, after receiving a TIN, to include that TIN in its business records, file a return correcting the missing (or incorrect TIN) and reflect the TIN on any returns thereafter filed. However, the solicitation requirements under Code section 3406, which satisfy the solicitation requirements of these regulations, do not require the filer to correct the missing or incorrect TIN by refile the information return with correct information. To bring about parallel results, the final regulations delete the correction requirement for TINs from the special rule for acting in a responsible manner.

Commentators also requested clarification of particular circumstances that would satisfy the initial solicitation requirement, the application of the special transitional rules to accounts opened before 1989, the dates by which first annual solicitations must be made if accounts are opened in the month of December, the definition of a "missing TIN," and the application of the requirement that the filer make two consecutive annual solicitations to a year in which no return is required to be filed. The final regulations include clarifications on these points. The final regulations also provide clarification through a number of editorial changes.

Other Comments

Commentators made a number of recommendations relating to programs, systems, procedures and legislative initiatives the Service should adopt or pursue in connection with its administration of the information reporting penalty provisions. These comments are beyond the scope of the regulations and are therefore not addressed in the final regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 because the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the

regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these final regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Personnel from other Offices of the Internal Revenue Service and the Treasury Department participating in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate tax, Excise taxes, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Statistics, Taxes.

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURES AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *

§§ 301.6721-0T through 301.6724-1T (Removed)

Par. 2. Temporary regulations §§ 301.6721-0T through 301.6724-1T are removed.

Par. 3. Sections 301.6721-0 through 301.6724-1 are added to read as follows:

§ 301.6721-0 Table of Contents.

In order to facilitate the use of §§ 301.6721-1 through 6724-1, this § 301.6721-0 lists the paragraph headings contained in these sections.

§ 301.6721-1 Failure to file correct information returns.

- (a) Imposition of penalty.
 - (1) General rule.
 - (2) Failures subject to the penalty.
- (b) Reduction in the penalty when a correction is made within specified periods.
 - (1) Correction within 30 days.
 - (2) Correction after 30 days but on or before August 1.
 - (3) Required filing date defined.
 - (4) Penalty amount for return with multiple failures.
 - (5) Examples.
 - (6) Applications to returns not due on February 28 or March 15.
- (c) Exception for inconsequential errors or omissions.
 - (1) In General.

- (2) Errors or omissions that are never inconsequential.
- (3) Examples.
- (d) Exception for a *de minimis* number of failures.
 - (1) Requirements.
 - (2) Calculation of the *de minimis* exception.
 - (3) Examples.
 - (4) Nonapplication to returns not due on February 28 or March 15.
- (e) Lower limitations on the \$250,000 maximum penalty amount with respect to persons with gross receipts of not more than \$5,000,000.
 - (1) In general.
 - (2) Gross receipts test.
- (f) Higher penalty for intentional disregard of requirement to file timely correct information returns.
 - (1) Application of section 6721(e).
 - (2) Meaning of "Intentional disregard."
 - (3) Facts and circumstances considered.
 - (4) Amount of the penalty.
 - (5) Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.
 - (6) Examples.
- (g) Definitions.
 - (1) Information return.
 - (2) Statements.
 - (3) Returns.
 - (4) Other items.
 - (5) Payee.
 - (6) Filer.

§ 301.6722-1 Failure to furnish correct payee statements.

- (a) Imposition of penalty.
 - (1) General rule.
 - (2) Failures subject to the penalty.
- (b) Exception for inconsequential errors or omissions.
 - (1) In general.
 - (2) Errors or omissions that are never inconsequential.
 - (3) Examples.
- (c) Higher penalty for intentional disregard of requirement to furnish timely correct payee statements.
 - (1) Application of section 6722(c).
 - (2) Amount of the penalty.
 - (3) Computation of the penalty; aggregate dollar amount of items required to be shown correctly.
- (d) Definitions.
 - (1) Payee.
 - (2) Payee statement.
 - (3) Other items.

§ 301.6723-1 Failure to comply with other information reporting requirements.

- (a) Imposition of penalty.
 - (1) General rule.
 - (2) Failures subject to the penalty.
 - (3) Exception for inconsequential errors or omissions.
 - (4) Specified information reporting requirement defined.
- (b) Examples.

§ 301.6724-1 Reasonable cause.

- (a) Waiver of the penalty.
 - (1) General rule.
 - (2) Reasonable cause defined.
- (b) Significant mitigating factors.
- (c) Events beyond the filer's control.

- (1) In general.
- (2) Unavailability of the relevant business records.
- (3) Undue economic hardship relating to filing on magnetic media.
- (4) Actions of the Internal Revenue Service.
- (5) Actions of agent—imputed reasonable cause.
- (6) Actions of the payee or any other person.
- (d) Responsible manner.
 - (1) In general.
 - (2) Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.
- (e) Acting in a responsible manner—special rules for missing TINs.
 - (1) In general.
 - (i) Initial solicitation.
 - (ii) First annual solicitation.
 - (iii) Second annual solicitation.
 - (iv) Additional requirements.
 - (v) Failures to which a solicitation relates.
 - (vi) Exceptions and limitations.
 - (2) Manner of making annual solicitations—by mail or telephone.
 - (i) By mail.
 - (ii) By telephone.
- (f) Acting in a responsible manner—special rules for incorrect TINs.
 - (1) In general.
 - (i) Initial solicitation.
 - (ii) First annual solicitation.
 - (iii) Second annual solicitation.
 - (iv) Additional requirements.
 - (2) Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.
 - (3) Manner of making annual solicitation if notified pursuant to section 6721.
 - (4) Failures to which a solicitation relates.
 - (5) Exceptions and limitations.
- (g) Due diligence safe harbor.
- (h) Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.
 - (1) In general.
 - (2) Special rule on TINs.
- (i) [Reserved].
- (j) Failures to which this section relates.
- (k) Examples.
- (l) [Reserved].
- (m) Procedure for seeking a waiver.
- (n) Manner of payment.

§ 301.6721-1 Failure to file correct information returns.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of \$50 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (g) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed

\$250,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a *de minimis* number of failures. See paragraph (e) of this section for lower limitations to the \$250,000 maximum penalty. See paragraph (f) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (a)(1) of § 301.6724-1 for waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6721(a) and paragraph (a)(1) of this section apply are—

(i) A failure to file an information return on or before the required filing date ("failure to file timely"), and

(ii) A failure to include all of the information required to be shown on the return or the inclusion of incorrect information ("failure to include correct information"). A failure to file timely includes a failure to file in the required manner, for example, on magnetic media or in other machine-readable form as provided under section 6011(e).

However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2)(A), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement). The 250-threshold requirements applies separately to each type of information return required to be filed. Further, the 250-threshold requirement applies separately to original and corrected returns. Thus, for example, if a filer files 300 returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV, the corrected returns may be filed either on the prescribed paper form (because they fall below the 250-threshold requirement) or on magnetic media or other machine-readable form. Filers who are required to file information returns on magnetic media and who file such information returns electronically are considered to have satisfied the magnetic media filing requirement. Except as provided in paragraph (c)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue

rulings, revenue procedures, or information reporting forms and form instructions). A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on a magnetic media submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the magnetic media submission, such an error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure.

(b) *Reduction in the penalty when a correction is made within specified periods*—(1) *Correction within 30 days.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be \$15 in lieu of \$50 if the failure is corrected on or before the 30th day after the required filing date ("within 30 days"). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed \$75,000.

(2) *Correction after 30 days but on or before August 1.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be \$30 in lieu of \$50 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs ("after 30 days but on or before August 1"). (See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on February 28 or March 15.) The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed \$150,000.

(3) *Required filing date defined.* The term "required filing date" means the date prescribed for filing an information return with the Internal Revenue Service (or the Social Security Administration in the case of Forms W-2) determined with regard to any extension of time for filing.

(4) *Penalty amount for return with multiple failures.* If a return is subject to a penalty for more than one failure, and the penalty amounts for the failures differ, the higher penalty amount will be imposed.

(5) *Examples.* The provisions of paragraphs (a) and (b) (1) through (4) of this section may be illustrated by the following examples. These examples do

not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

Example 1. Corporation R fails to file timely 11,000 Forms 1099-MISC (relating to miscellaneous income) for the 1990 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 6,000 after 30 days but on or before August 1, 1991. For the same year R fails to file timely 400 Forms 1099-INT (relating to payments of interest) which R eventually files on September 28, 1991, after the period for reduction of the penalty has elapsed. R is subject to a penalty of \$20,000 for the 400 forms which were not filed by August 1 ($\$50 \times 400 = \$20,000$), \$150,000 for the 6,000 forms filed after 30 days ($\$30 \times 6,000 = \$180,000$, limited to \$150,000 under paragraph (b)(2) of this section), and \$75,000 for the 5,000 forms filed within 30 days ($\$15 \times 5,000 = \$75,000$), for a total penalty of \$245,000.

Example 2. Corporation T fails to file timely 6,000 Forms 1099-MISC for the 1990 calendar year. T files the 6,000 Forms 1099-MISC on September 1, 1991. Because T does not correct the failure by August 1, 1991, T is subject to a penalty of \$250,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a), T would be subject to a \$300,000 penalty ($\$50 \times 6,000 = \$300,000$).

Example 3. Corporation U files timely 300 Forms 1099-MISC on paper for the 1990 calendar year with correct information. Under section 6011(e)(2) a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 1991. It is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of \$2,500 for 50 returns ($\$50 \times 50 = \$2,500$).

Example 4. Corporation V files 300 Forms 1099-MISC on paper for the 1990 calendar year. The forms were filed on March 15, 1991, rather than on the required filing date of February 28, 1991. Under Section 6011(e)(2), a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 1991. V is subject to a penalty of \$3,750 for filing 250 of the returns late ($\$15 \times 250$) and \$2,500 for failing to file 50 returns on magnetic media ($\$50 \times 50$) for a total penalty of \$6,250.

(6) *Application to returns not due on February 28, or March 15.* For returns that are not due on February 28 or March 15 (for example, Forms 8300

reporting certain cash payments of \$10,000 or more), the penalty is \$15 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is \$50 rather than \$30. There is no period during which the penalty is reduced to \$30 under paragraph (b)(2) of this section.

(c) *Exception for inconsequential errors or omissions—(1) In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term "inconsequential error or omission" means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (g)(5) of this section for the definition of "payee."

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential—

- (i) A taxpayer identification number;
- (ii) A surname of a payee (i.e., the person required to be furnished a copy of the information set forth on an information return); and
- (iii) Any monetary amounts. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

Example 1. A filer files a Form 1099-MISC (relating to miscellaneous income) with the Internal Revenue Service. The Form 1099-MISC is complete and correct except that the word "street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. A filer files a Form 1099-MISC with the Internal Revenue Service. The Form 1099-MISC is complete and correct except that the payee's first name, William, is misspelled as "Willaim." the error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended

use. See paragraph (c)(2) of this section. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 3. A filer files a Form 1099-MISC with the Internal Revenue Service. The Form 1099-MISC is complete and correct except that the payee's name, "John Doe," is misspelled as "John Ode." Under paragraph (c)(2) of this section, supplying an incorrect surname for a payee is never considered an inconsequential error. Therefore, a penalty is imposed under paragraph (a) of this section.

(d) *Exception for a de minimis number of failures—(1) Requirements.* The penalty under paragraph (a) of this section is not imposed for a *de minimis* number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. (See paragraph (d)(4) of this section for special rules relating to returns that are not due on February 28 or March 15.)

(2) *Calculation of the de minimis exception.* The number of returns to which the *de minimis* exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the *de minimis* exception applies, the *de minimis* exception applies to those returns that will afford the filer the greatest reduction in penalty. The *de minimis* exception applies to failures to include correct information that exist after the application (if any) of the waiver for reasonable cause under section 6724(a) and § 301.6724-1. Returns to which the *de minimis* exception applies are treated as having been originally filed with correct information.

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1 of this section.

Example 1. Corporation T files timely 10,000 Forms 1099-INT (relating to payments of interest) for 1990 by February 28, 1991. The 10,000 returns are all the information returns that T is required to file during the 1991 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 1991. No penalty is imposed for 50 of the failures (i.e., the greater of 10 or .005 x 10,000 = 50) even though the

total failures, 70, exceed the number to which the *de minimis* exception may apply. The \$30 penalty under paragraph (b)(2) of this section is imposed, in lieu of \$50, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of \$600 ($\$30 \times 20 = \600).

Example 2. Corporation U files timely 9,500 Forms 1099-INT for 1990 by February 28, 1991, the required filing date. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 1991. U also files 500 Forms 1099-INT for 1990 on August 30, 1991, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 1991 calendar year. The calculation of the *de minimis* exception is based on the 10,000 returns required to be filed during the 1991 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the *de minimis* exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099-INT that were corrected on August 1, 1991. However, the \$50 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely, resulting in a total penalty of \$25,000 ($\$50 \times 500 = \$25,000$).

Example 3. Corporation V files timely 9,950 Forms 1099-INT for 1990 by February 28, 1991. However, V fails to file timely 50 of its Forms 1099-INT. The 10,000 returns are all the information returns that V is required to file during the 1991 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 1991. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 1991. Absent application of the *de minimis* exception, the penalty imposed for the failure to include correct information would be \$1,500 ($\$30 \times 50 = \$1,500$). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the *de minimis* exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the *de minimis* exception does not apply to the penalty for the failure to file timely. Hence, a penalty of \$750 ($\$15 \times 50 = \750) is imposed.

Example 4. Corporation W files timely 100 Forms 1099-DIV and files an additional 50 Forms 1099-DIV late, but within 30 days of February 28, 1991. These are all the information returns that W was required to file during the 1991 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The *de minimis* exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (i.e., applying the exception to a return filed late with incorrect information would save W \$15, by reducing the penalty on that return from \$30 to \$15, but applying the

exception to a return filed timely would save W \$30, by reducing the penalty on that return from \$30 to \$0). (See paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on February 28 or March 15.* The exception for a *de minimis* number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of \$10,000 or more). Nevertheless, the returns that are not due on February 28 or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the *de minimis* exception under paragraph (d)(2) of this section.

(e) *Lower limitations on the \$250,000 maximum penalty amount with respect to persons with gross receipts of not more than \$5,000,000—(1) In general.* If a person meets the gross receipts test (as defined in paragraph (e)(2) of this section) for any calendar year, the total amount of the penalty imposed on such person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during such calendar year shall not exceed \$100,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed \$25,000 for such calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed \$50,000 for such calendar year.

(2) *Gross receipts test.* A person meets the gross receipts test for any calendar year if the average annual gross receipts for such person for the three most recent taxable years ending before such calendar year do not exceed \$5,000,000. For purposes of determining the amount of gross receipts during the three most recent taxable years, the rules of section 448(c) (2) and (3) shall apply.

(f) *Higher penalty for intentional disregard of requirement to file timely correct information returns—(1) Application of section 6721(e).* If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (g) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (f)(4) of this section.

(2) *Meaning of "intentional disregard."* A failure is due to intentional disregard if it is a knowing or willful—

(i) Failure to file timely, or
(ii) Failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

(3) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure is due to intentional disregard include, but are not limited to—

(i) Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information;

(ii) Whether correction was promptly made upon discovery of the failure;

(iii) Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the Internal Revenue Service to file or to correct; and

(iv) Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each such failure determined under this paragraph (f)—

(i) Paragraphs (b), (d), and (e) of this section shall not apply;

(ii) The \$250,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (f) shall not be taken into account in applying the \$250,000 limitation (or any similar limitation under paragraph (b) or (e) of this section) to penalties not determined under this paragraph (f);

(iii) The penalty imposed under paragraph (a) of this section shall be \$100 or, if greater, the statutory percentage; and

(iv) The term "statutory percentage" means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I (for amounts received after November 5, 1990), 6050J, 6050K, or 6050L, 10 percent of the aggregate dollar amount of the items required to be reported correctly,

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly, or

(C) In the case of a return required to be filed under section 6050I(a) with respect to amounts received after November 5, 1990, for any transaction (or related transactions), the greater of \$25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed \$100,000.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (f) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099-INT on which \$800 of interest and \$130 of Federal income tax withheld (i.e., backup withholding) is required to be reported, only the \$800 amount is taken into account in computing the penalty.

(6) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. On December 1, 1990, Automobile dealer P receives \$55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as "John Doe." However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the payor. Because P knew at the time of filing the Form 8300 that the payor's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (f)(2) of this section. Therefore, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is \$55,000 (i.e., the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is \$55,000 (i.e., the greater of

\$25,000 or the amount of cash received in the transaction up to \$100,000).

Example 2. On December 1, 1990, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F \$20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the payor, F writes "confidential." Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is \$20,000 (i.e., the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is \$25,000 (i.e., the greater of \$25,000 or the amount of cash received in the transaction up to \$100,000).

Example 3. Corporation M deliberately does not include \$5,000 of dividends on a Form 1099-DIV (relating to payments of dividends) on which a total of \$200,000 (including the \$5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) is determined under paragraph (f)(4) of this section. Because the Form 1099-DIV is required to be filed under section 6042(a), under paragraph (f)(4)(ii)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (f)(5) of this section, \$5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is \$500 (\$5,000 \times .10 = \$500).

Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of \$1,000,000, when the correct amount was \$1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show \$80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of \$120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as \$80,000. Thus A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of \$40,000. The requirement of reporting gross receipts is considered merely a step in the computation

of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be \$4,000 (i.e., 10 percent of the difference between the \$40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(g) *Definitions.*—(1) *Information return.* For purposes of this section the term "information return" means any statement described in paragraph (g)(2) of this section, any return described in paragraph (g)(3) of this section, and any other items described in paragraph (g)(4) of this section.

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041 (a) or (b) (relating to certain information at source, generally reported on Form 1099-MISC, Form W-2G, Form W-2, and Form 1099-INT).

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099-DIV).

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099-PATR).

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099-INT).

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099-MISC).

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099-INT), or

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W-2).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099-MISC).

(ii) Section 6045(a) or (d) (relating to returns of brokers generally reported on Form 1099-B for broker transactions, Form 1099-S for gross proceeds from the sale or exchange of real estate, and Form 1099-MISC for certain substitute payments).

(iii) Section 6050H(a) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098).

(iv) Section 6050I(a) (relating to cash received in trade or business, generally reported on Form 8300).

(v) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099-A).

(vi) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308).

(vii) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282).

(viii) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W-2).

(ix) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027).

(x) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition)).

(xi) Section 4093(c)(4)(A) or (C) or, effective for information returns required to be filed after December 31, 1989, and before December 1, 1990, section 4093(e) (relating to information reporting with respect to tax on diesel and aviation fuels).

(xii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990)), or

(xiii) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition)).

(4) *Other items.* The term "information return" also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the Form 1042S.

(5) *Payee.* For purposes of section 6721 the term "payee" means any person who is required to receive a copy of the information set forth on an information return by the filer of the return as defined in section 6724(d)(1).

(6) *Filer.* For purposes of this section the term "filer" means a person that is required to file an information return as

defined in paragraph (g)(1) of this section under the applicable information reporting section described in paragraph (g) (2) through (4) of this section.

§ 301.6722-1 Failure to furnish correct payee statements.

(a) *Imposition of penalty.*—(1) *General rule.* A penalty of \$50 is imposed for each payee statement (as defined in section 6724(d)(2)) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A "composite substitute payee statement" is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed \$100,000. See section 6722(c) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (a)(1) of § 301.6724-1 for a waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6722(a) and paragraph (a)(1) of this section apply are—

(i) A failure to furnish a payee statement on or before the prescribed date therefore to the person to whom such statement is required to be furnished ("failure to furnish timely"), and

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information ("failure to include correct information"). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue

ulings, revenue procedures, or information reporting forms).

(b) *Exception for inconsequential errors or omissions.*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (b), the term "inconsequential error or omission" means any failure that cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement to its intended use.

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential:

- (i) A dollar amount.
- (ii) The significant items in the address of a payee, which is the address provided by the payee to the filer.
- (iii) The appropriate form for the information provided (*i.e.*, whether or not the form is an acceptable substitute for an official form of the Internal Revenue Service), and
- (iv) The manner of furnishing a statement required under sections 6042(c), 6044(e), 6049(c), and 6050N(b). The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

Example 1. A payor furnishes a statement with respect to a Form 1099-MISC (relating to miscellaneous income). The payee statement is complete and correct, except the word "boulevard" is misspelled in the payee's address. The error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. Assume the same facts in Example 1, except that the only error on the payee statement is that the payee's street address, 4821 Grant Boulevard, is reported incorrectly as 8421 Grant Boulevard. A penalty is imposed under paragraph (a) of this section with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use.

(c) *Higher penalty for intentional disregard of requirement to furnish timely correct payee statements*—(1) *Application of section 6722(c)*. If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under § 301.6721-1(f)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) *Amount of the penalty*. If one or more failures under paragraph (a) of this section are due to intentional disregard of the requirement to furnish timely payee statements or of the requirement to include correct information, then, with respect to each such failure determined under this paragraph (c)(2)—

(i) The \$100,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the \$100,000 limitation to penalties not determined under this paragraph (c)(2);

(ii) The penalty imposed under paragraph (a) of this section shall be \$100 or, if greater, the statutory percentage; and

(iii) The term "statutory percentage" means—

(A) In the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6060L(c), 10 percent of the aggregate dollar amount of the items required to be reported correctly, or

(B) In the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate dollar amount of the items required to be reported correctly

(3) *Computation of the penalty; aggregate dollar amount of items required to be shown correctly*. The aggregate dollar amount used in computing the penalty under this paragraph (c) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining such amount

the same item shall be counted only once. For example, if a filer willfully fails to furnish a Form 1099-INT on which \$800 of interest and \$160 of Federal income tax withheld (i.e., backup withholding) is required to be shown, only the \$800 amount is taken into account in computing the penalty.

(d) *Definitions*—(1) *Payee*. See § 301.6721-1(g)(5) for the definition of "payee."

(2) *Payee statement*. The term "payee statement" means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K-1 (Form 1065) for section 6031(b) or (c), a copy of the Schedule K-1 (Form 1041) for section 6034A, and a copy of Schedule K-1 (Form 1120S) for section 6037(b)),

(ii) Section 6039(a) (relating to information required in connection with certain options),

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099-MISC, Form W-2, Form 1099-INT, and the winner's copies of Form W-2G),

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099-MISC),

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099-DIV),

(vi) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099-PATR),

(vii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099-B for broker transactions, the transferor copy of Form 1099-S for reporting proceeds from real estate transactions, and the recipient copy of Form 1099-MISC for certain substitute payments),

(viii) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099-INT),

(ix) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099-MISC),

(x) Section 6050H(d) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098),

(xi) Section 6050I(e) (relating to returns relating to cash received in trade or business, generally a copy of Form 8300),

(xii) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099-A),

(xiii) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308),

(xiv) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282),

(xv) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099-MISC),

(xvi) Section 6051 (relating to receipts for employees, generally the employee copy of Form W-2),

(xvii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W-2),

(xviii) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W-2), and

(xix) Section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels).

(3) *Other items*. The term "payee statement" also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the recipient copy of Form 1042S.

§ 301.6723-1 Failure to comply with other information reporting requirements.

(a) *Imposition of penalty*—(1) *General rule*. A penalty of \$50 is imposed for each failure to comply timely with a specified information reporting requirement (as defined in paragraph (a)(4) of this section) or for each failure to include correct specified information. Multiple penalties are imposed with respect to a document with failures to comply with more than one of the requirements set forth in paragraph (a)(4) of this section or multiple instances of failures to comply with any one of these requirements. Nonetheless, if a failure that occurs with respect to any requirement defined in paragraph (a)(4) of this section would be subject to a penalty under both paragraph (a)(2)(i) and paragraph (a)(2)(ii) of this section, no more than one penalty is imposed for such failure. The total amount imposed on any person for all failures during any calendar year with respect to all

specified information reporting requirements shall not exceed \$100,000. See paragraph (a) of § 301.6724-1 for the waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which paragraph (a)(1) of this section apply are—

(i) A failure to comply timely with a specified information reporting requirement on or before the date prescribed therefor ("failure to comply timely"), and

(ii) A failure to include all the information required by a specified information reporting requirement or the inclusion of incorrect information ("failure to include correct information").

(3) *Exception for inconsequential errors or omissions.* An inconsequential error or omission is not considered a failure to comply with a specified information reporting requirement. For purposes of paragraph (a)(3) of this section, an error or omission is considered inconsequential if it does not frustrate the purpose or use for which the information is intended.

(4) *Specified information reporting requirement defined.* For purposes of section 6723 and this section, a "specified information reporting requirement" means—

(i) The requirement to provide the notice under section 6050K(c)(1) (relating to the requirement that a transferor notify the partnership of an exchange of a partnership interest);

(ii) Any requirement contained in the regulations under section 6109 that a person—

(A) Include his or her taxpayer identification number ("TIN") on any return, statement, or other document (other than an information return or payee statement),

(B) Include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person, or

(C) Furnish his or her TIN to another person;

(iii) Any requirement contained in the regulations under section 215 that a person—

(A) Furnish his or her TIN to another person, or

(B) Include on his or her return the TIN of another person; and

(iv) The requirement under section 6109(e) that a person include the TIN of any dependent on his or her return.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples which do not take into account the reasonable cause waiver under section

6724(a) and paragraph (a)(1) of § 301.6724-1.

Example 1. Individual A, who has two dependents ages 7 and 9, files his 1990 Form 1040 in 1991. The Form 1040 requires him to provide the TINs of his two dependents, which A fails to do. Because A fails to comply timely with two requirements to include on his return the TIN of another person, a \$50 penalty under paragraph (a) of this section is imposed on A for each of the two failures, for a total penalty of \$100.

Example 2. In 1991 Individual B opens with Bank X an account which pays reportable interest under section 6049. When B opens the account, Bank X requests that B provide his TIN on a Form W-9. B does not provide his TIN as required by § 301.6109-1(b). As a result B fails to comply timely with a specified information reporting requirement under paragraph (a) of this section for furnishing his TIN to another person. Therefore, a \$50 penalty is imposed on B under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which X may be subject if X files a Form 1099-INT (relating to payments of interest) for calendar year 1991 without B's TIN. See section 3406(a)(1)(A) which requires X to impose backup withholding on reportable payments of interest to B's account.

Example 3. In 1991 Individual C is a nonresident alien with an account inside the U.S. with Bank Z. The account pays interest that would be reportable under section 6049 but for the fact that it is paid to a nonresident alien. Under section 6109 and § 301.6109-1(b), Bank Z is required to request the TIN from C. C claims that he is a nonresident alien and that his account is not subject to information reporting under section 6049. Because of this, C contends he is not required to provide any TIN information. As a result of this discussion, Bank Z then requests C to provide it with a Form W-8 in order for C to certify that he is a nonresident alien which C fails to do. C fails to comply timely with a specified information reporting requirement under paragraph (a) of this section to furnish his TIN to another person. Therefore, a penalty is imposed on C under paragraph (a) of this section for the failure. See section 6721(a) for the penalty that may be imposed on Z if Z files a Form 1099-INT for calendar year 1991 without C's TIN. See section 3406(a)(1)(A) under which Z is required to impose backup withholding on reportable payment of interest to C's account.

Example 4. In 1991 Partnership D opens with Bank Y an account that pays reportable interest under section 6049. When D opens the account, Y requests the partnership's employer identification number (EIN) on a Form W-9 as required under § 301.6109-1(b). The partnership provides its EIN on the Form W-9. Y files an information return with respect to D for the 1991 calendar year. Subsequently, the Internal Revenue Service later notifies Y that D's EIN is incorrect as defined under section 3406 and § 35a.3406-1(a)(6). D fails to comply timely with a specified reporting requirement under paragraph (a) of this section of furnishing its correct EIN to another person. Therefore, a penalty is imposed on D under paragraph (a) of this section for the failure. See section

6721(a) for the penalty to which Y may be subject if Y files a Form 1099-INT for calendar year 1991 without D's correct EIN. See section 3406(a)(1)(B), which requires Y to impose backup withholding on reportable payments of interest to B's account when the Internal Revenue Service or a broker has notified Y that the EIN is incorrect.

§ 301.6724-1 Reasonable cause.

(a) *Waiver of the penalty—(1)*

General rule. The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Reasonable cause defined.* The penalty is waived for reasonable cause only if the filer establishes that either—

(i) There are significant mitigating factors with respect to the failure, as described in paragraph (b) of this section; or

(ii) The failure arose from events beyond the filer's control ("impediment"), as described in paragraph (c) of this section.

Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence.

(b) *Significant mitigating factors.* In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. The mitigating factors include, but are not limited to—

(1) The fact that prior to the failure the filer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or

(2) The fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to—

(i) Whether the filer has incurred any penalty under §§ 301.6721-1, 301.6722-1,

or 301.6723-1 in prior years for the failure (or under parallel provisions of prior law), and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

A filer may treat as a penalty not incurred any penalty under sections 6721 through 6723 that was self-assessed under section 6724(c)(3) and any penalty under section 6676(b) that was self-assessed under section 6676(d), prior to amendment or repeal by the Omnibus Budget Reconciliation Act of 1989. See paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent.

(c) *Events beyond the filer's control—*

(1) *In general.* In order to establish reasonable cause under this paragraph (c)(1), the filer must satisfy paragraph (d) of this section and must show that the failure was due to events beyond the filer's control. Events which are generally considered beyond the filer's control include but are not limited to—

(i) The unavailability of the relevant business records (as described in paragraph (c)(2) of this section),

(ii) An undue economic hardship relating to filing on magnetic media (as described in paragraph (c)(3) of this section),

(iii) Certain actions of the Internal Revenue Service (as described in paragraph (c)(4) of this section),

(iv) Certain actions of an agent (as described in paragraph (c)(5) of this section), and

(v) Certain actions of the payee or any other person providing necessary information with respect to the return or payee statement (as described in paragraph (c)(6) of this section).

(2) *Unavailability of the relevant business records.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the unavailability of the relevant business records, the filer's business records must have been unavailable under such conditions, in such manner, and for such period as to prevent timely compliance (ordinarily at least a 2-week period prior to the due date (with regard to extensions) of the required return or the required date (with regard to extensions) for furnishing the payee statement), and the unavailability must have been caused by a supervening event. A "supervening event" includes, but is not limited to—

(i) A fire or other casualty that damages or impairs the filer's relevant business records or the filer's system for processing and filing such records;

(ii) A statutory or regulatory change that has a direct impact upon data

processing and that is made so close to the time that the return or payee statement is required that, for all practical purposes, the change cannot be complied with; or

(iii) The unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for filing a return or furnishing a payee statement.

(3) *Undue economic hardship relating to filing on magnetic media.* In order to establish reasonable cause under paragraph (c)(1) of this section due to an undue economic hardship for filing on magnetic media, the filer must show that it failed to file on magnetic media because the filer lacked the necessary hardware. For purposes of this paragraph (c)(3), the filer will not be considered to have acted in a responsible manner under paragraph (d) of this section unless—

(i) The filer attempted on a timely basis to contract out the magnetic media filing;

(ii) The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions) (90 days for information returns the due date for which (without regard to extensions) is after December 31, 1989, and by or before February 28, 1991 (March 15, 1991, for Forms 1042S));

(iii) The cost was supported by a minimum of two cost estimates from unrelated parties; and

(iv) The filer filed the returns on paper. Reasonable cause will not ordinarily be established under this paragraph (c)(3) if a filer received a reasonable cause waiver in any prior year under paragraph (c)(1) of this section due to an undue economic hardship relating to filing on magnetic media.

(4) *Actions of the Internal Revenue Service.* In order to establish reasonable cause under paragraph (c)(1) of this section due to certain actions of the Internal Revenue Service, a filer must show that the failure was due to the filer's reasonable reliance on erroneous written information from the Internal Revenue Service. Reasonable reliance means that the filer relied in good faith on the information. The filer shall not be considered to have relied in good faith if the Internal Revenue Service was not aware of all the facts when it provided the information to the filer. In order to substantiate reasonable cause under this paragraph (c)(4), the filer must provide a copy of the written information provided by the Internal Revenue Service and, if applicable, the filer's written request for the information.

(5) *Actions of agent—imputed reasonable cause.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of an agent, the filer must show the following:

(i) The filer exercised reasonable business judgment in contracting with the agent to file timely correct returns or furnish timely correct payee statements with respect to which the failure occurred. This includes contracting with the agent and providing the proper information sufficiently in advance of the due date of the return or statement to permit timely filing of correct returns or timely furnishing of correct payee statements; and

(ii) The agent satisfied the reasonable cause criteria set forth in paragraph (b) or one of the reasonable cause criteria set forth in paragraph (c) (2) through (6) of this section.

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of the payee or any other person, such as a broker as defined in section 6045(c), providing information with respect to the return or payee statement, the filer must show either—

(i) That the failure resulted from the failure of the payee, or any other person required to provide information necessary for the filer to comply with the information reporting requirements ("any other person"), to provide information to the filer, or

(ii) That the failure resulted from incorrect information provided by the payee (or any other person) upon which information the filer relied in good faith. To substantiate reasonable cause under this paragraph (c)(6), the filer must provide documentary evidence upon request of the Internal Revenue Service showing that the failure was attributable to the payee (or any other person). See paragraph (d)(2) of this section for special rules relating to the availability of a waiver where the filer's failure relates to a taxpayer identification number (TIN), and the failure is attributable to actions of the payee described in paragraph (c)(6) (i) or (ii) of this section.

(d) *Responsible manner—(1) In general.* Acting in a responsible manner means—

(i) That the filer exercised reasonable care, which is that standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations and in handling account information such as account numbers and balances, and

(ii) That the filer undertook significant steps to avoid or mitigate the failure, including, where applicable—

(A) Requesting appropriate extensions of time to file, when practicable, in order to avoid the failure,

(B) Attempting to prevent an impediment or a failure, if it was foreseeable,

(C) Acting to remove an impediment or the cause of a failure, once it occurred, and

(D) Rectifying the failure as promptly as possible once the impediment was removed or the failure was discovered. Ordinarily, a rectification is considered prompt if it is made within 30 days after the date the impediment is removed or the failure is discovered or on the earliest date thereafter on which a regular submission of corrections is made. Submissions will be considered regular only if made at intervals of 30 days or less. A failure may be rectified by filing or correcting the information return, furnishing or correcting the payee statement, or by providing or correcting the information to satisfy the specified information reporting requirement with respect to which the failure occurs. Paragraph (d)(ii)(D) of this section does not apply with respect to information the filer is prohibited from altering under specific information reporting rules. See § 1.6045-4(i)(5) of this chapter.

(2) *Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.* A filer seeking a waiver for reasonable cause pursuant to paragraph (c)(6) of this section with respect to a failure resulting from a missing or an incorrect TIN will be deemed to have acted in a responsible manner in compliance with this paragraph (d) only if the filer satisfies the requirements of paragraph (e) of this section (relating to missing TINs) or paragraph (f) of this section (relating to incorrect TINs), whichever is applicable.

(e) *Acting in a responsible manner—special rules for missing TINs—(1) In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN or an information return resulted from the failure of the payee to provide information to the filer (*i.e.*, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (required solicitations). For purposes of this section, a number is treated as a "missing TIN" if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral)

as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. See paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. See paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term "account" includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)-3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations ("annual solicitations").

(ii) *First annual solicitation.* Except as provided in paragraph (e)(1)(vi) of this section, a filer must undertake an annual solicitation if a TIN is not received as a result of an initial solicitation (or if the filer was not required to make an initial solicitation under paragraph (e)(1)(i) of this section and the filer has not received a payee's TIN). The first annual solicitation must be made on or before December 31 of the year in which the account is opened (for accounts opened before December

or January 31 of the following year (for accounts opened in the preceding December) ("annual solicitation period").

(iii) *Second annual solicitation.* If the TIN is not received as a result of the first annual solicitation, the filer must undertake a second annual solicitation. The second annual solicitation must be made after the expiration of the annual solicitation period and on or before December 31 of the year immediately succeeding the calendar year in which the account is opened.

(iv) *Additional requirements.* After receiving a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(v) *Failures to which a solicitation relates.* The initial and first annual solicitations relate to failures on returns filed for the year in which an account is opened. The second annual solicitation relates to failures on returns filed for the year immediately following the year in which an account is opened and for succeeding calendar years.

(vi) *Exceptions and limitations.* (A) The solicitation requirements under this paragraph (e) do not apply to the extent an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721-1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (e) will be satisfied only if the filer complies with the manner and time period requirements of the specific information reporting provision and the provisions of this paragraph (e) to the extent applicable. Also, see section 3406(e) which provides rules on the manner and time period in which a TIN must be provided for certain accounts with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(B) An annual solicitation is not required to be made for a year under this paragraph (e) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721-1 is required to be filed for the account for the year.

(C) If a filer fails to make one (or more) of the required solicitations under paragraphs (e)(1)(i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by—

(1) Making two consecutive annual solicitations in subsequent years ("make-up solicitations"), and

(2) Satisfying paragraph (e)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (e)(1)(vi)(B) of this section applies shall be disregarded. If a filer fails to make the initial solicitation under paragraph (e)(1)(i) of this section, the make-up solicitations described in this paragraph (e)(1)(vi)(C) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures with respect to years for which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make its initial solicitation) if the second make-up solicitation is made in the following year.

(D) A financial institution is not required to make an annual solicitation by mail on accounts with "stop-mail" or "hold-mail" instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(E) A filer is not required to make annual solicitations on accounts with respect to which the filer undertook two consecutive annual mailings by December 31, 1989, under Q/A-5 through Q/A-7B or under Q/A-56 of § 35a.9999-1 of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, as provided under section 6676(b) (prior to its amendment by the Omnibus Budget Reconciliation Act of 1989).

(F) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, i.e., where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(G) Except as provided in paragraph (e)(1)(vi) (A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

(2) *Manner of making annual solicitations—by mail or telephone—(i) By mail.* A mail solicitation must include—

(A) A letter informing the payee that he or she must provide his or her TIN and that he or she is subject to a \$50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(B) A Form W-9 or an acceptable substitute form, as defined in § 31.3406(h)-3 (a), (b), or (c) of this chapter, on which the payee may provide the TIN, and

(C) A return envelope for the payee to provide the TIN which may be, but is not required to be, postage prepaid.

(ii) *By telephone.* An annual solicitation may be made by telephone if the solicitation procedure is reasonably designed and carried out in a manner that is conducive to obtaining the TIN. An annual solicitation is made pursuant to this paragraph (e)(2)(ii) for a failure if the filer—

(A) Completes a call to each person with a missing TIN and speaks to an adult member of the household, or to an officer of the business or the organization,

(B) Requests the TIN of the payee,

(C) Informs the payee that he or she is subject to a \$50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(D) Maintains contemporaneous records showing that the solicitation was properly made, and

(E) Provides such contemporaneous records to the Internal Revenue Service upon request.

(f) *Acting in a responsible manner—special rules for incorrect TINs—(1) In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (i.e., inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). See paragraph (e)(1) of this section for the definition of the term "solicitation." See paragraph (f)(5)(i) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term "account" includes accounts, relationships, and other

transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)-3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. No additional solicitation is required after the filer receives the TIN unless the Internal Revenue Service or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraph (f)(1) (ii) and (iii) of this section.

(ii) *First annual solicitation.* Except as provided in paragraph (f)(5) of this section, a filer must undertake an annual solicitation only if the payor has been notified of an incorrect TIN and such account contains the incorrect TIN at the time of the notification. The first annual solicitation must be made as required by paragraph (f) (2) or (3) of this section, whichever applies. An account contains an incorrect TIN at the time of notification if the name and number combination on the account matches the name and number combination set forth on the notice from the Internal Revenue Service or a broker. A filer may be notified of an incorrect TIN by the Internal Revenue Service or by a broker pursuant to section 3406(a)(1)(B) and § 35a.3406-1 (c) and (f) of this chapter issued under the Interest and Dividend Tax Compliance Act of 1983, or by a penalty notice issued by the Internal Revenue Service pursuant to section 6721(n). Except as otherwise provided in this section, the annual solicitation required by this paragraph (f) must be made on or before December 31 of the year in which the filer is notified of the incorrect TIN or by January 31 of the following year if the filer is notified of an incorrect TIN in the preceding December.

(iii) *Second annual solicitation.* A filer must undertake a second annual solicitation as required by paragraph (f) (2) or (3) of this section, whichever applies, if the filer is notified in any year following the year of the notification described in paragraph (f)(1)(ii) of this section that the account of a payee

contains an incorrect TIN, as described in paragraph (f)(1)(ii) of this section.

(iv) *Additional requirements.* Upon receipt of a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(2) *Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.* A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) and the regulations thereunder (except filers to which § 35a.3406-1(a)(3)(x) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under § 35a.3406-1 (c) or (f) of this chapter, whichever applies. Section 35a.3406-1 (c)(2)(i) and (f)(1)(ii) of this chapter requires the filer to notify a payee that the payee's account contains an incorrect TIN within 15 business days after the date of the notice from the Internal Revenue Service or a broker.

(3) *Manner of making annual solicitation if notified pursuant to section 6721.* A filer that has been notified of an incorrect TIN by a penalty notice or other notification issued pursuant to section 6721 and that has received no effective notice pursuant to section 3406(a)(1)(B) during the same calendar year (or is a filer to which § 35a-3406-1(a)(3)(x) of this chapter applies) may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section, or by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section, or by requesting the TIN in person.

(4) *Failures to which a solicitation relates.* The initial solicitation relates to failures on returns filed for the year an account is opened and for any succeeding year that precedes the year in which the filer receives a notification of an incorrect TIN. The first and second annual solicitations relate to failures on returns filed for the year in which a notification of an incorrect TIN is received. The second solicitation also relates to failures on returns filed for succeeding calendar years.

(5) *Exceptions and limitations.*—(i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721-1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the

filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721-1 is required to be filed for the account for such year.

(iii) If a filer fails to make one (or more) of the required solicitations under paragraph (f)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by:

(A) Making two consecutive annual solicitations in subsequent years ("make-up solicitations"), and

(B) Satisfying paragraph (f)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (f)(5)(ii) of this section applies are disregarded. If a filer fails to make the initial solicitation under paragraph (f)(1)(i) of this section, the make-up solicitations described in this paragraph (f)(5)(iii) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures in years in which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make the initial solicitation) if the second make-up solicitation is made in the following year.

(iv) A financial institution is not required to make an annual solicitation by mail on accounts with "stop-mail" or "hold-mail" instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(v) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, i.e., where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(vi) In general, except as provided in paragraph (f)(5) (i) and (iii) of this

section, no more than two annual solicitations are required under this paragraph (f) in order for a filer to establish reasonable cause. However, a filer who complies with this paragraph (f) during a calendar year after receiving a notice under section 6721 and who later during the same calendar year receives a notice pursuant to section 3406 may be required to undertake additional annual mailings in such calendar year pursuant to section 3406(a)(1)(B) in order to satisfy the annual solicitation requirement in paragraph (f)(2) of this section.

(g) *Due diligence safe harbor.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section for any return defined in paragraph (g) of § 301.6721-1 if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723 and under section 6676(b) and the Temporary Employment Tax Regulations related thereto issued under the Interest and Dividend Tax Compliance Act of 1983 (with respect to a failure to provide a correct TIN) (§ 35a.9999-1 of this chapter *et seq.*) (prior to amendment or repeal of these sections by the Omnibus Budget Reconciliation Act of 1989).

(h) *Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991—(1) In general.* With respect to information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, a filer will be deemed to have satisfied reasonable cause if, with respect to the failure, the filer would have satisfied reasonable cause under sections 6721, 6722, or 6723 (prior to their amendment by the Omnibus Budget Reconciliation Act of 1989) and the regulations thereunder.

(2) *Special rule on TINs.* With respect to information returns required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, which contain a missing or an incorrect TIN, a filer will be deemed to have satisfied reasonable cause if, at the time the account was opened, the filer—

(i) Exercised due diligence or fulfilled the requirements of Q/A-56 of § 35a.9999-1 of this chapter, as provided under section 6676(b) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989),

(ii) Requested the TIN according to the regulations under the section requiring the filing of the information return, but if none, under section 6109, or

(iii) Would have satisfied reasonable cause under section 6676(a) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989).

(i) [Reserved.]

(j) *Failures to which this section relates.* For purposes of this section, a failure relating to an information reporting requirement means—

(1) A failure described under § 301.6721-1(a)(2) relating to the failure to file timely correct information returns as defined in section 6724(d)(1).

(2) A failure described under § 301.6722-1(a)(2) relating to the failure to furnish timely a correct payee statement as defined in section 6724(d)(2), and

(3) A failure described under § 301.6723-1(a)(2) relating to the failure to timely comply with and to include correct specified information as defined in section 6724(d)(3).

(k) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (i) On August 1, 1991, Individual A, an independent contractor, establishes a relationship ("an account") with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his TIN. On October 1, 1991, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (c)(1)(ii) of this section. A does not provide a TIN to L during 1991. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 1991 calendar year with respect to A's account. A penalty is imposed on L pursuant to paragraph (a)(2) of § 301.6721-1 for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, L must satisfy both paragraphs (c) (6) and (d) of this section. The criteria for obtaining a waiver under these paragraphs are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section, and

(B) L demonstrates that the failure arose from events beyond L's control, as described in paragraph (c) (6) of this section.

(iii) Pursuant to paragraph (d) (2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive

the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c) (6) of this section because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a) (2) of this section. Therefore, the penalty imposed under paragraph (a) (2) of § 301.6721-1 for the failure on the 1991 information return is waived. See section 3406 (a) (1) (A) which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

Example 2. (i) On August 1, 1991, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 28, 1992, M includes the TIN that B provided on the Form 1099-INT for the 1991 calendar year. In October 1992 the Internal Revenue Service, pursuant to section 3406 (a) (1) (B), notifies M that the 1991 return filed for B contains an incorrect TIN. In April 1993 a penalty is imposed on M pursuant to paragraph (a) (2) of § 301.6721-1 for M's failure to file a correct information return for the 1991 calendar year, i.e., the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c) (6) and (d) of this section. Pursuant to paragraph (d) (2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f) (4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 1991 in the time and manner prescribed in paragraph (f) (1) (i) of this section and reflected the TIN received from B on the 1991 return as required by paragraph (f) (1) (iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c) (6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a) (2) of this section. Therefore, the penalty imposed under paragraph (a) (2) of § 301.6721-1 for the failure on the 1991 information return is waived. See section 3406 (a) (1) (B) which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

Example 3. (i) Table.

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return.	B-notice w/ respect to 1991 return.	1992 return filed.
4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 2*. Under § 35a.3406-1(c)(1) of this paragraph and paragraph (f)(2) of this section, within 15 days of the October 1992 notification of the incorrect TIN from the Internal Revenue Service, M solicits the correct TIN from B. B fails to respond. M timely files the return for 1992 with respect to the account setting forth B's incorrect TIN. In October 1993 the Internal Revenue Service notifies M pursuant to section 3406(a)(1)(B) that the 1992 return contains an incorrect TIN. In April 1994, a penalty is imposed on M pursuant to paragraph (a)(1)(2) of § 301.6721-1T for M's failure to include B's correct TIN on the return for 1992. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

(iii) M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the Internal Revenue Service notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial solicitation for the TIN in 1991 and, after being notified of the incorrect TIN in October 1992, the first annual solicitation within the time and manner prescribed by section 35a.3406-1(c)(1) of this chapter and paragraph (f) (1)(ii) and (2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721-1T for the failure on the 1992 return is waived due to reasonable cause.

Example 4. (i) Table.

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.
4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in Example 3. M timely solicits B's TIN in October 1993, which B fails to provide. M files the return for 1993 with the incorrect TIN. In April 1995 the Internal Revenue Service informs M that the 1993 return contains an incorrect TIN. M does not solicit a TIN from B in 1994 and files a return for 1994 with B's incorrect TIN. M seeks a waiver of the penalty under paragraph (a)(2) of § 301.6721-1 for reasonable cause. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 1994. See paragraph (f)(5)(iv) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

Example 5. In 1992, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H and to section 6721. As part of the transaction, C gives N a promissory note providing for repayment of principal and the payment of interest. At the time C incurs the obligation N requests C's TIN, as required under § 1.6050H-2(f) of this chapter. C fails to provide the TIN as required by § 1.6050H-2(f) of this chapter. N sends solicitations by mail in 1992 and 1993 for the missing TIN, which C fails to provide. However, for 1994 M fails to send the solicitation required by § 1.6050H-2(f) of this chapter. N files returns for the 1992, 1993, and 1994 calendar years pursuant to section 6050H without C's TIN. Although N made the initial and the first annual solicitations in 1992 and the second annual solicitation in 1993, N did not solicit the TIN in 1994 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under paragraph (a) of § 301.6721-1T for the 1994 information return is not waived.

Example 6. (i) Table.

10/91	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.
4/93	10/93	02/94	4/94
6721 penalty notice.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) On October 1, 1991, Individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 1991 calendar year. In October 1992 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 1991 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 1992, R telephones E pursuant to paragraphs (f)(3) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 1992 calendar year, i.e., in February 1993.

(iii) In April 1993, the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721-1 that the information return filed for the 1991 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iv) To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (i.e., 1991) and for subsequent years until the calendar year in which the filer receives a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 1991 calendar year information return is waived due to reasonable cause.

Example 7. (i) The facts are the same as in Example 6. In April 1994 the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721-1 that the information return filed for the 1992 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(2) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under § 35a.3406-1(c)(1) of this chapter. Section 35a.3406-1(c)(1) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 1992 information return, and the penalty will not be waived due to reasonable cause.

(l) [Reserved.]

(m) **Procedure for seeking a waiver.** In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the district director or the director of the Internal Revenue Service Center where the returns, as defined in section 6724(d), are required to be filed. The statement must—

(1) State the specific provision under which the waiver is being requested, i.e., paragraph (b) or under paragraph (c) (2) through (6).

(2) Set forth all the facts alleged as the basis for reasonable cause.

(3) Contain the signature of the person required to file the return, and

(4) Contain a declaration that it is made under penalties of perjury. See § 1.6061-1 of the Income Tax Regulations for the rules on the signing of returns.

(n) **Manner of payment.** The penalty due under sections 6721 through 6723 shall be paid upon notice and demand by Internal Revenue Service, and in the same manner as a tax liability is paid.

Dated: December 18, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon

Assistant Secretary of the Treasury.

[FR Doc. 91-30908 Filed 12-27-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly

favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 *Federal Register*, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under the authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: December 19, 1991

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

Part 36—LOAN GUARANTY

1. The authority citation for §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 210, 1812).

§ 36.4212 [Amended]

2. In § 36.4212, remove the date "September 18, 1991", wherever it appears, and add, in its place, the date "December 20, 1991".

3. In § 36.4212, paragraph (a)(1), remove the number "11", wherever it appears, and add, in its place, the number "10½"; in paragraphs (a)(2) and (a)(3), remove the number "10½", wherever it appears, and add, in its place, the number "10".

4. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4311 [Amended]

5. In § 36.4311, remove the date "September 18, 1991", wherever it appears, and add, in its place, the date "December 20, 1991".

6. In § 36.4311, paragraph (a), remove the number "8½", wherever it appears, and add, in its place, the number "8"; in paragraph (b), remove the number "8¾", wherever it appears, and add, in its place, the number "8¼"; in paragraph (c), remove the number "10", wherever it appears, and add, in its place, the number "9½".

7. The authority citation for §§ 36.4500 through 36.4600 continues to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the numbers "8½" and "10", wherever they appear, and add in their place, the numbers "8" and "9½", respectively.

[FR Doc. 91-31132 Filed 12-27-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-4089-3]

Prevention of Significant Deterioration of Air Quality; North Carolina: Partial Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On August 13, 1991, the State of North Carolina requested delegation of authority for implementing the NO_x increment portion of the Prevention of Significant Deterioration (PSD) regulations. EPA's review of North Carolina's pertinent laws and the rules and regulations thereof, indicates that they provide an adequate procedure for the implementation and enforcement of these federal standards, and the Agency has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 7, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at the following address:

Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street, NE., Atlanta,
Georgia 30365.

All reports required, pursuant to the newly delegated standards, should not be submitted to the EPA Region IV office, but should instead be submitted to the following address:

Mr. Lee A. Daniel, Jr., Chief, North
Carolina Department of Environment,
Health, and Natural Resources,
Division of Environmental
Management, Air Quality Section,
P.O. Box 29535, Raleigh, North
Carolina 27626-0535.

FOR FURTHER INFORMATION CONTACT:
Andrew Fischer of the EPA Region IV
Air, Pesticides and Toxics Management
Division, 345 Courtland Street, NE.,
Atlanta, Georgia 30365, telephone 404/
347-2864.

SUPPLEMENTARY INFORMATION: On
November 24, 1976, the Agency's Region
IV Administrator initially delegated to

the State of North Carolina authority to perform the administrative and technical portions of the Federal program for PSD air quality. On December 22, 1978, the Region IV Administrator requested a letter that the delegations be amended to apply to 40 CFR 52.21 as revised by the 1977 Clean Air Act Amendments. The State of North Carolina responded with a letter on January 22, 1979, that the PSD program be amended as requested. On August 13, 1991, the State of North Carolina requested partial delegation of authority for implementing the NO_x increment portion of the PSD regulations. On October 7, 1991, the EPA determined that the pertinent laws of the State of North Carolina and the rules, and regulations thereof, provide an adequate procedure for the implementation of these regulations. Therefore, in its October 7, 1991 letter, the EPA, pursuant to 40 CFR 52.21, and the conditions and limitations set forth therein, relinquished its primary responsibilities for the NO_x increment portion of the PSD regulations, as described in 40 CFR 52.21, to the State of North Carolina.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting Regional Administrator

[FR Doc. 91-31151 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-4089-2]

Prevention of Significant Deterioration of Air Quality; Tennessee: Partial Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On July 17, 1991, the State of Tennessee requested partial delegation of authority (technical review portion) for the implementation and enforcement for the Nitrogen Dioxide (NO₂) increment portion of the Prevention of Significant Deterioration (PSD) regulations. EPA's review of Tennessee's laws, rules and regulations showed that they provide for adequate and effective implementation of the technical portion of the NO₂ PSD program.

EFFECTIVE DATE: The effective date of the delegation of authority is August 19, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at the following address:

Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street, NE., Atlanta,
Georgia 30365.

All applications and reports pursuant to the NO₂ PSD newly delegated standards should be addressed to:

Mr. Harold E. Hodges, Technical
Secretary of the Tennessee Air
Pollution Control Board, Customs
House, 701 Broadway, Nashville,
Tennessee 37243.

FOR FURTHER INFORMATION CONTACT:

Andrew Fischer of the EPA, Region IV,
Air Programs Branch, 345 Courtland
Street, NE., Atlanta, Georgia 30365,
telephone 404/347-2864.

SUPPLEMENTARY INFORMATION: On June 15, 1981, EPA delegated the PSD program to the State of Tennessee. Prior to October 17, 1988, the PSD program required protection of PSD increments for only two pollutants: TSP and SO₂. On February 8, 1988, EPA proposed regulations to add NO₂ increments to the PSD program requirements. These regulations were promulgated by the EPA on October 17, 1988. The NO₂ increments regulation became effective November 19, 1990. On that date, the EPA Regional Office assumed the responsibility for reviewing the NO₂ increments portion of the PSD permit applications for States such as Tennessee that did not adopt requirements for the PSD NO₂ increments. On July 17, 1991, the State of Tennessee requested partial delegation of authority for the NO₂ increment portion of the PSD regulation. Therefore, in its August 19, 1991, letter, the EPA, pursuant to 40 CFR 52.01 and 52.21, and the conditions and limitations set forth therein, relinquished its primary responsibilities only for the technical portion of the Federal NO₂ PSD program, as described in 40 CFR 52.21, to the State of Tennessee.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-31152 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-4089-1]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company (Reynolds), Gum Springs, Arkansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: December 30, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (Room M2427), Washington, DC. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-91-CMF-FFFFF". The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 260-7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the waste at levels of regulatory concern.

B. History of this Rulemaking

Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned the Agency to exclude from hazardous waste control its K088 spent potliner wastes treated at

its R.P. Patterson facility in Gum Springs, Arkansas. After evaluating the petition, EPA proposed, on July 18, 1991 to exclude Reynolds' waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 56 FR 32993).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Reynolds' petition.

II. Disposition of Delisting Petition

A. Reynolds Metals Company, Gum Springs, Arkansas

1. Proposed Exclusion

Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned the Agency to conditionally exclude kiln residue derived from processing spent potliners using its rotary kiln treatment process. Reynolds plans to move its thermal treatment process from Bauxite, Arkansas to another Reynolds facility located in Gum Springs, Arkansas, and requested that the upfront exclusion apply to kiln residue generated at the new facility location. The kiln residue is presently listed, in accordance with 40 CFR 261.3(c)(2)(i) (*i.e.*, the "derived from" rule), as EPA Hazardous Waste No. K088—"Spent potliners from primary aluminum reduction". The listed constituent of concern for EPA Hazardous Waste No. K088 waste is cyanide (complexes) (see 40 CFR part 261, appendix VII).

In support of its petition, Reynolds submitted (1) Detailed descriptions of its waste treatment process; (2) a description of the processes generating spent potliners that were treated by the rotary kiln process; (3) total constituent analysis results for the eight metals listed in 40 CFR 261.24; (4) total constituent analysis results for antimony, beryllium, nickel, cyanide, and fluoride from representative samples of both the kiln residue and the untreated spent potliners; (5) EP leachate analysis results for the eight metals listed in 40 CFR 261.24, antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (6) TCLP leachate analyses for the metals in 40 CFR 261.24 (except mercury), antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (7) total constituent analysis results for volatile and semi-volatile organic compounds, dioxins, and furans from representative samples of the kiln residue; and (8) test results and information regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Reynolds in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment.

Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) and the Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the hazardous constituents in Reynolds' petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 56 FR 32993, July 18, 1991, for a more detailed description of the EPACML, the modifications made to this model for delisting, and an explanation of why EPA proposed to grant Reynolds' petition for its kiln residue.

2. Agency Response to Public Comments

The Agency received public comments on the use of the EPACML in delisting petition evaluations and the proposed decision to grant an exclusion to Reynolds Metals from ten different parties. All commenters were generally in favor of the Agency's proposal to use the EPACML for delisting evaluations. The majority of commenters believed that the EPACML was a distinct improvement over the Vertical and Horizontal Spread (VHS) model and believed that the EPACML provides a sounder basis for evaluating wastes under a reasonable worst-case disposal scenario. Two commenters clearly supported the Agency's proposed decision to delist the kiln residue from Reynolds' rotary kiln process. These commenters believed that the granting of the final exclusion would minimize the toxicity of spent potliners and will provide a safer alternative to direct disposal in a landfill. In addition, the commenters believed that this exclusion would provide a needed treatment technology for the industry as a whole.

The remainder of this section addresses specific comments received on the Agency's decision to grant an exclusion for Reynolds Metals.

a. Length of the Comment Period

Comment: One commenter requested that the comment period should be extended for a minimum of 60 days so that the necessary documents to develop comments could be obtained or that EPA should promulgate the EPACML.

with additional information describing the model.

Response. The Agency believes that it is unnecessary to provide an extension of the comment period for this exclusion. The Agency believes that adequate information was provided in the proposed notice and in the RCRA public docket for the notice to allow individuals to develop comments on the use of the model in evaluating Reynolds' petition. The EPACML is not a new model and its general use in the delisting program has been suggested by the Agency in the past. Specifically, the Agency first proposed and requested comments on the use of the EPACML in delisting evaluations on August 1, 1988 (see 53 FR 28892). In the promulgation of the Toxicity Characteristic (see 55 FR 11798 March 29, 1990), the Agency addressed the comments received and provided detailed descriptions of the development and use of the EPACML. Therefore, the Agency believes that at the time this exclusion was proposed there was adequate information publicly available on the EPACML from a variety of sources from which to develop comments on the use of the EPACML in evaluating Reynolds' petition. The Agency believes that an extension of the comment period is unnecessary.

The Agency also notes that it may consider incorporating the EPACML into the delisting regulations (40 CFR 260.22) as a key criterion in evaluating delisting petitions. At that time adequate information describing the model will again be provided.

b. Analytical Methods and Testing Requirements

Comment: One commenter noted that the extraction procedure used by Reynolds for cyanide was modified by substituting distilled water for the acetate buffer. The commenter stated that they believed that the concentration of leachable cyanide would be decreased when using distilled water rather than the prescribed acetate buffer in the extraction procedure. The commenter questioned why distilled water was allowed as a reagent since complex cyanides are the hazardous constituents for which K088 waste was listed.

Response: The Agency acknowledges the commenter's concern about the replacement of the leaching solution during cyanide analysis. The primary reason for this change is that the liberation of hydrogen cyanide gas during the use of an acidic leaching medium will likely lower the concentration of cyanide that will be measured in the waste leachate. Secondly, as hydrogen cyanide gas is

highly toxic, its release is a grave concern for the safety of laboratory workers and bystanders. As a result, the Agency has determined that it would be prudent to modify the leaching procedure to prevent the liberation of hydrogen cyanide gas.

To further address the commenter's concern regarding the levels of leachable cyanide in the waste, the Agency evaluated the total cyanide concentrations in Reynolds' petitioned waste. The Agency assumed a worst-case leaching scenario (*i.e.*, that during the TCLP leaching procedure there is a 20-fold dilution inherent in the procedure and that all the cyanide leaches from the waste). When the maximum total cyanide concentration in Reynolds' waste (16 ppm) was evaluated in this manner, the maximum leachable concentration of cyanide was estimated to be 0.8 ppm. Using this value as an input to the EPACML resulted in a maximum compliance-point concentration of 0.067 ppm of leachable cyanide which is below the delisting health-based level of 0.2 ppm. Thus, the Agency continues to believe that leachable cyanide will not be present in the kiln residues at levels of concern.

Comment: One commenter believed that the extensive analytical requirements for organic constituents in the conditional testing requirements are unnecessary due to low levels of organics found in the kiln residues. A second commenter believed that the testing requirements for polyaromatic hydrocarbons (PAHs) should be discontinued if they do not show up in initial verification testing. This commenter also suggested that as PAHs are among the more immobile and insoluble compounds in the environment, a much higher DAF (such as 1,000) should be used for establishing the delisting levels for those compounds. Another commenter believed that the subsequent verification testing conditions for organic constituents may be excessive and suggested that an alternate sampling and analytical plan for the solid residues be used which would require fewer analyses of semi-volatile organics based on a statistical sampling approach. This commenter further noted that since the SW-846 Methods 8250 and 8270 practical quantitation limits (PQLs) for the organic constituents of concern were no higher than 10 ppb, the regulatory levels should be based on the PQLs.

Response: The Agency believes that the testing requirement for organics listed in Condition (4)(B) is reasonable. As noted in Table 4 of the proposed exclusion, Reynolds' untreated spent potliner contained several organic

constituents at significant concentrations. The Agency agrees with the commenter that the Reynolds process appears to be effective in reducing levels of organic constituents in the kiln residue based on total constituent data. The Agency is concerned that the concentrations of organic constituents in the kiln residue may vary somewhat depending on the potliner treated and the facility generating the spent potliner. As noted in the proposal, the Agency addressed this concern by proposing initial and subsequent regular analyses of the petitioned kiln residue, prior to disposal. The Agency believes that the potential for variation of constituent concentrations in the spent potliner provides sufficient justification for requiring on-going testing to ensure that the Reynolds treatment process continues to consistently and effectively reduce organic constituent levels. The Agency believes that on-going testing is especially prudent considering the potentially large volume of waste generated by Reynolds (3,360 tons of kiln residue per week per kiln). A reduction from daily testing during initial verification to weekly testing during subsequent verification provides sufficient assurance that any waste exceeding the delisting levels set in the exclusion will be disposed of properly and provides a minimal amount of analytical burden on Reynolds. The Agency believes that this testing scheme is reasonable and will provide adequate protection to human health and the environment.

The Agency does not believe that DAFs as high as 1,000 should be used for PAHs based on constituent-specific dilution/attenuation factors in the subsurface environment. The Agency believes that it is inappropriate to consider extensive site-specific factors as such, because a waste once delisted is no longer subject to RCRA control and may therefore be transported to any disposal unit at an unknown location of unknown site conditions. As described in the proposed rule, the Agency therefore used a Monte Carlo method to account for the wide range of environmental conditions found at various disposal sites across the nation. In addition, the immobility and insolubility of organic compounds has already been considered in the proposed use of the EPACML for Reynolds' waste through the incorporation of the TCLP leachate concentrations for establishing the delisting levels for PAHs. While the TCLP leachate concentrations reflect the leachable constituents that may migrate in the subsurface, immobile constituents

should not leach out using the TCLP. Although the commenter suggested the use of a DAF of 1,000 for PAHs, the commenter did not provide any quantitative basis for this number.

The Agency also does not believe that sufficient data are available in this case for use in determining sampling frequency using a statistical approach. While a statistical approach such as that presented by the commenter may have merits, the Agency does not believe that adequate information on the variable nature of the waste is available. Without such data on the variability of the waste, a statistical approach in developing a sampling plan for this waste stream may allow batches that have not been treated to the required levels to escape detection and be disposed in a manner that does not adequately protect human health and the environment. The sampling plan as proposed in the exclusion, in contrast, provides that each batch of waste be analyzed for constituents of concern prior to disposal. This procedure ensures that Reynolds consistently treats the spent potliners from various aluminum reduction facilities to the required levels and minimizes the risk of improper disposal of the petitioned waste.

The Agency recognizes that determination of some organic constituents using SW-846 analytical methods may be difficult. However, delisting levels for the leachable organics concentrations are not set at practical quantitation limits (PQL) in this case, because the PQLs are matrix-dependent and Reynolds did not provide any information in this regard. As described in the July 18 proposed rule (56 FR 33005), Reynolds only reported the total constituent concentrations of organic compounds in the kiln residue. The Agency did not require Reynolds to further quantify the leachable concentrations of those organic compounds, because the reported total constituent data reflected that leachable organic constituents were not expected to be present in the kiln residue samples analyzed at levels of concern. Without any specific information on the PQLs that would be associated with Reynolds' kiln residue for the analysis of leachable organic constituents of concern, the Agency, therefore, did not base the delisting levels for organics on the PQLs. The Agency understands that using current analytical methodologies, Reynolds may not be able to obtain quantitation levels for several constituents below the delisting levels set in Condition (4)(B). For these constituents, the Agency will accept data that are reported as "not detected"

or "below detection limit" as long as an appropriate analytical method is used, the detection limit reported is reasonable for the analyzed matrix, and that all of the required QA/QC information is provided and is determined to be adequate.

C. Health-based Levels Used by Delisting

Comment: One commenter objected to some of the levels of regulatory concern, specifically lead, nickel, and cyanide, which are used in conjunction with the EPACML model to establish delisting levels. The commenter believed that the maximum contaminant level (MCL) for lead of 0.05 mg/l should be used, and that the Agency should not use the proposed MCLs for nickel and cyanide in the evaluation of the petitioned waste or setting the verification testing levels.

Response: The Agency believes that MCLs, when they exist, are the most appropriate health criteria to use for developing levels for use in this delisting decision. MCLs are promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, and consider technology and economic feasibility as well as health effects. The exposure scenario evaluated for Reynolds' petitioned waste is based on the ingestion of contaminated drinking water and because MCLs are developed for regulation of drinking water, they are clearly useful for delisting evaluations. In the absence of formal MCLs, the Agency has also used proposed MCLs as health-based levels in delisting decisions, because proposed MCLs are typically the most up-to-date evaluation of the available toxicological and analytical data.

While the commenter is correct in stating that the existing MCL for lead is still 0.05 mg/l, this level will only remain effective until November 9, 1992. At that time, it will be replaced by a treatment standard with an action level of 0.015 mg/l, in accordance with the new drinking water regulations promulgated on June 7, 1991 (56 FR 26460). In the absence of a new formal MCL for lead, the Agency believes that prudence requires that the exclusion level be established using the more conservative action level of 0.015 mg/l. EPA established this new treatment standard for lead instead of an MCL because, as concluded in the preamble to the final rule, the threshold for various health effects associated with lead is difficult to determine. Given that the Agency's goal is to minimize lead exposure among sensitive populations, however, the treatment standard with an action level was established. While the action level is not a formal MCL, EPA stated in the

preamble to the lead rule that the level of 0.015 mg/l is "associated with substantial public health protection" (see 56 FR 26477, June 7, 1991).

While the existing lead MCL of 0.05 mg/l will remain in effect until November 9, 1992, the Agency believes the use of this level in setting Reynolds' delisting level for lead would be inappropriate. The effective date for the action level and accompanying treatment standard for lead were delayed to allow public drinking water systems sufficient time to comply with this new rule. Such a delay is not warranted in the case of Reynolds' exclusion. Further, the Agency believes that to establish exclusion levels using an old MCL, that will soon be superseded by a more stringent standard, will not be sufficiently protective of human health.

For similar reasons, the Agency also believes that it is appropriate to use proposed MCLs in setting the delisting health-based levels for cyanide and nickel. As noted above, in the absence of final MCLs for nickel and cyanide, the Agency believes that exclusion levels established using the proposed levels of 0.1 and 0.2 mg/l for nickel and cyanide, respectively, will be appropriate for use in delisting evaluations.

Comment: One commenter believed that the delisting criteria should be expressed as a formula rather than a single concentration limit for each regulated metal of concern. The commenter suggested that the delisting concentration for a constituent should be expressed as the product of the health-based level (HBL) for that constituent multiplied by the dilution attenuation factor (DAF) for landfills that the EPACML specifies for the annual volume of waste generated by a facility.

Response: The Agency does not believe that it would be appropriate for the delisting criteria to be expressed as a formula. In setting verification testing conditions, the Agency provides specific concentrations for the facilities to meet in order for a petitioned waste to be excluded from hazardous waste control. The Agency actually uses the type of formula described by the commenter (i.e., $DAF \times HBL$) to calculate the acceptable delisting level. However, incorporating the formula into the verification testing conditions would not, by itself, provide specific delisting criteria necessary for Reynolds' conditional exclusion.

d. Site-specific Delisting/Disposition of Delisted Wastes

Comment: Several commenters believed that the Agency should consider site-specific information along with waste specific information when evaluating petitions, especially in the case where the petitioner is requesting the delisting of wastes which will remain in place at a particular site. One commenter believed that the Monte Carlo Procedure uses over-simplified unrealistic and conservative stimulation scenarios that are not applicable to delisting scenarios. Another commenter felt that the use of an affidavit as proof of disposal intent was sufficient to justify use of site specific information.

Response: The Agency maintains that a delisting decision should be based on waste-specific, not disposal-site-specific, information. The Agency believes that the use of waste-specific, rather than site-specific, information during petition evaluation is necessary to ensure that the potential risks associated with the wastes are adequately assessed. The Agency does not believe that delisting evaluations should be based on the prediction of future storage or disposal conditions (such as the waste remaining in place) at a particular site, because once delisted, a waste can typically be disposed of in any subtitle D facility. In the Agency's view, an exclusion should be based on the waste's characteristic, not on its location. Furthermore, an affidavit of site-specific disposal intent does not bind a facility in the future from disposing of an excluded waste at a different location or in a different manner. For these reasons, the Agency believes that it is appropriate to model a reasonable worst-case scenario.

In addition, in this case, Reynolds did not petition the Agency for a site-specific delisting, and did not provide any site-specific data that could be used in such an analysis. Thus, the Agency believes that a reasonable worst-case disposal scenario was appropriate for evaluating Reynolds' petitioned waste.

Comment: One commenter believed that since the delisted waste may be beneficially reused, recycled or reclaimed, and that the EPACML is based on simulating fate and transport from a waste management unit, the delisted wastes should be confined to regulated management units (subtitle D or State regulated).

Response: In the case of Reynolds' petitioned waste, the Agency considers a landfill scenario as a reasonable worst-case scenario. Reynolds has stated in its petition that it expects to dispose of the waste in an on-site or off-

site landfill. Thus, the Agency believes that the EPACML fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste. In addition, spent potliners in general, have been recycled or beneficially reused only on a small scale in the U.S. The Agency believes that the kiln residue from spent potliner will also have little potential for recycle or reuse. For these reasons, the Agency believes that the EPACML models the reasonable worst-case disposal scenario for this waste.

However, the Agency does not wish to constrain the disposal of excluded wastes to a regulated waste management unit and thereby inhibit the beneficial reuse or recycling of the material. Reuse of hazardous waste materials in a manner constituting disposal is allowable under 40 CFR 266.20. Therefore, in the case of Reynolds exclusion, EPA does not believe the limitation suggested by the commenter is either necessary or appropriate.

Verification Testing

Comment: Two commenters believed that Condition (5), which requires Reynolds to reinstitute initial verification testing if they wish to add a new source of spent potliner, was extremely burdensome and had minimal corresponding benefit. Both commenters stated that the 20-day testing requirement would require approximately 3,360 tons of untreated spent potliner for processing in Reynolds' kiln. Many facilities would be required to stockpile (at a hazardous waste storage facility) spent potliner for over a year before being able to supply sufficient potliners to Reynolds to meet this testing requirement. Both commenters believed reinstituting verification testing for a three-day period (which would require approximately 500 tons of spent potliner) would be sufficient to demonstrate that Reynolds could treat spent potliners from another primary reduction facility effectively and provide the Agency with adequate data to document the effectiveness of the treatment process relative to the potliner source.

Response: The Agency agrees that it may be overburdensome to aluminum reduction facilities to stockpile spent potliner for over a year prior to treatment. To balance the Agency's need for sufficient data and to ease the storage and analytical burden on smaller volume aluminum reduction facilities, the Agency has decided to reduce the verification testing period to a minimum of four days for each new

source of spent potliner, during which daily composite samples must be collected and analyzed. This requirement is consistent with 40 CFR 260.22(h) regarding collection of a minimum of four representative samples for the delisting demonstration. While the Agency believes that Reynolds will have likely resolved any start-up operational problems during the first 20 days of initial verification testing, some initial verification testing requirements are still necessary to ensure that a new potliner source will not pose any technical or operational problems for Reynolds. The Agency believes that a return to initial verification testing for four operating days will allow Reynolds sufficient time to determine if it can successfully treat spent potliners from other aluminum reduction facilities, allow resolution of any processing problems, and collect information that demonstrates whether Reynolds' process can successfully treat the spent potliner from the new source. Therefore, the Agency modified Condition (5) of the exclusion so that, if Reynolds successfully completes the four-day period of initial verification testing, Reynolds may return to the subsequent testing conditions in Condition (2)(B) for the new potliner source upon receiving notification from EPA. If this four-day testing is not successful, then Reynolds must continue to test the kiln residue beyond the four-day period as required by Condition (5).

f. Use of Models for Delisting

Comment: One commenter believed that EPA misstated its reliance on the use of models in reviewing delisting petitions. The commenter claimed that EPA always, not often, uses fate and transport models to make delisting decisions. The commenter believed that EPA intends to use the model as a sole deciding factor (*i.e.*, a rule) and that the proposal should be withdrawn and re-proposed to amend 40 CFR 260.22. Furthermore, the commenter believed that the Agency used the model as a rule and thus violated the Administrative Procedure Act (5 U.S.C. 550 *et seq.*) by failing to articulate a rational basis for this proposal. The commenter also suggested that the proposal does not conform to the direction given EPA in the decision in *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1319 D.C. Cir. 1988, namely that EPA fails to be open to comments on the model and its use in specific delisting cases.

Response: While the Agency used fate and transport models in many past delisting evaluations, the Agency has also considered various other factors in

making delisting decisions. For example, in some cases, the Agency has determined that petitioned wastes are characteristic wastes, relying on the criteria established under 40 CFR 261.24, not a fate and transport model. In other cases petitions have failed the Agency's evaluation on the basis of ground-water contamination that may have arisen from disposal of the petitioned waste. Regardless of the bases of any past decisions, the Agency believes that, in this case, the EPACML model is an appropriate tool to use in the evaluation of Reynolds' waste because, as noted in the proposal, the Agency believes that disposal in a landfill is a reasonable worst-case scenario for Reynolds' petitioned waste. Therefore, the Agency believes that it has appropriately used the EPACML model in evaluating Reynolds' petitioned waste. Furthermore, in evaluating Reynolds' petition the Agency also evaluated alternate exposure scenarios including inhalation exposure and contamination of surface water from runoff. The Agency believes that it did not violate the Administrative Procedure Act (APA). Consistent with the APA, the Agency proposed to use the EPACML as a tool in making the delisting determination for Reynolds, and accepted public comment. The Agency continues to believe that the model is appropriate and has presented justification for using the EPACML in evaluating Reynolds' petition.

The Agency also believes that using the EPACML model in evaluating Reynolds' petition is consistent with the *McLouth* decision. That decision allows the Agency to use delisting models as a non-binding policy so long as the Agency exercises discretion in individual delisting cases and remains open to challenges to its use. The Agency believes that it has treated the model as a non-binding policy in its evaluation of Reynolds' petition, that the model is appropriate to use in Reynolds' case, and that it has fully considered comments on the proposed use of the EPACML model. In today's notice, EPA has responded to each criticism of the EPACML model. EPA has carefully reviewed the commenter's concerns in what it believes is an open-minded fashion. In the future, the Agency may consider amending 40 CFR 260.22 to incorporate the use of the EPACML into the delisting regulations. However, the Agency believes it is still proper to use this model as a tool in evaluating individual delisting petitions, as appropriate.

Comment: One commenter believed that the proposal fails to meet statutory

requirements of the Hazardous and Solid Waste Amendments (HSWA) to "consider other factors other than those for which the waste was listed." The commenter believed that the Agency has considered only "other constituents" but has failed to consider any other factors. The commenter believed that the proposed rule should be withdrawn and revised to reflect other factors to be considered in making the delisting petition decision.

Response: The Agency believes that it has fully complied with HSWA in evaluating this petition. HSWA requires the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. For example, the Agency evaluated whether the waste exhibited any of the hazardous waste characteristics of ignitability, reactivity, or corrosivity. In addition, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). As noted above, the Agency has also considered alternate exposure scenarios in its evaluation. In each case, the Agency determined that Reynolds' petitioned waste did not meet the criteria for classification as a hazardous waste and thus proposed an exclusion for the waste. As a result, the Agency believes that it has complied with HSWA and evaluated those factors which could cause the waste to be hazardous. The Agency notes that the commenter failed to mention any specific additional factors that it felt were ignored during the Agency's evaluation.

Comment: One commenter believed that the Agency should continue to use the Organic Leachate Model (OLM) in deriving delisting levels or predicting the leachate concentration from a waste source, and recommended that the Agency update the OLM to include more recent data.

Response: The OLM was initially developed by the Agency to provide a means of predicting the leachate concentration of organic constituents of concern in delisting petition review prior to the development of the TCLP method. The Agency relied on the OLM because, at the time, no reliable laboratory leaching technique had been accepted by the Agency. The OLM is an empirical model developed based on a data base of EP, modified EP, lysimeter, and other leachate data. The Agency developed the form of the model based on a theoretical leaching model and performed curve fitting regression

analyses to determine that optimum model parameters. The results of the model are controlled by the total constituent concentration and the constituent solubility. Since the Agency has promulgated the TCLP method, the Agency believes that it is more appropriate, in most cases, to use the extraction method to determine actual leachable organic concentrations instead of estimating the mobility of hazardous constituents based on total constituent data. Nevertheless, in Reynolds' case, the Agency evaluated organic constituent data from Reynolds' petition, using the OLM to estimate the concentration of organic constituents leaching from the petitioned waste because TCLP data were not specifically requested. The estimated organic constituent leachable concentrations were then used as inputs to the EPACML. The Agency evaluated this data and determined that the compliance-point concentrations were below the health-based levels for delisting decision-making. However, EPA established the levels in Condition (4)(B) based on the TCLP because the TCLP will provide a more direct indication of the potential leachability of organic constituents from this waste matrix than an empirical model. The Agency still believes, however, that the OLM is a useful tool in estimating the leachable levels of organic constituents, and may use it, as appropriate, in future delisting decisions.

Comment: One commenter believes that a consistent fate and transport model should be used in all delisting and related waste characterization rulemaking. The commenter went on to question whether the results of the VHS and EPACML are "correlatable", and if the Agency planned to reconsider past delistings and other rulemakings (*i.e.*, the Toxicity Characteristic) using the EPACML.

Response: As stated in the proposal to exclude Reynolds' waste, the Agency intends to use the EPACML, when appropriate, as a tool to evaluate the potential for waste to contaminate ground water at levels of concern. The Agency notes that the EPACML was used to support the promulgation of the Toxicity Characteristic (TC). While the input to the model used in the TC rule was somewhat different (*i.e.*, the delisting version uses the volume of the petitioned waste as an input, while the volume (more specifically the area of the landfill) was allowed to vary in the Monte Carlo simulation used in the TC rule), the use of the same model in both programs does, in fact, provide a measure of consistency. The Agency

discussed the reason for the differences in the delisting and TC use of the EPACML in the proposal to today's rule.

While the results to the EPACML and VHS are similar in some ways (e.g., both yield DAFs that decrease as waste volume increases), the EPACML yields somewhat higher DAFs than the VHS model for a given volume of waste. Therefore, the Agency believes that delistings granted in the past would likely be granted if re-evaluated using the newer model. EPA is evaluating the impact of the new model on conditional delistings (i.e., delistings that require verification testing of the waste, similar to Reynolds exclusion) and will consider the need for re-evaluation on a case-by-case basis.

g. Scaling Factor of 20

Comment: One commenter stated that the Agency has not demonstrated that the average remaining life span of subtitle D landfills in the United States is 20 years. This commenter also claimed that the use of the scaling factor of 20 is biased against facilities petitioning, on a one-time basis, for the exclusion of a specific volume of waste. One commenter noted that the EPA believes the 20-year scaling factor would discourage "intermittently-generated batches of waste" from being delisted but gives no reason as to why delisting of such wastes must be discouraged.

Response: The Agency believes that the 20-year operating life of a landfill, and therefore, the scaling factor of 20 is fully supported by a nationwide Agency survey of landfills (see Ref. 7, 56 FR 32998). The purpose of the 20-year scaling factor is to account for the total waste volume for wastes generated on a continual basis, as well as for wastes generated in intermittent batches, that may be placed in the same landfill. If a waste were generated in intermittent batches, the total volume would exceed that of the initial batch generated. For example, a facility could petition for 8,000 yd³ batches of waste every five years. If this were to continue for 20 years, the actual total volume of waste would be 32,000 yd³ rather than the 8,000 yd³ evaluated in each petition submitted intermittently. Therefore, delisting separate intermittent batches would not account for the total volume of waste and could underestimate the hazard to human health and the environment.

The Agency also notes that a provision is made for one-time generated wastes (56 FR 32998); " * * * if the petitioner can conclusively demonstrate that the waste is no longer being generated, it will not be generated

in the future, and no other similar waste is stored or disposed of on-site, then the factor of 20 seems unwarranted.

Therefore, the Agency intends to evaluate petitions for one-time exclusions on a case-by-case basis." Thus, as described in the proposal, the Agency does not believe that the scaling factor of 20 is biased against wastes generated on a one-time basis, rather it plans to investigate these petitions on a case-by-case basis.

Comment: One commenter stated that the EPACML, rather than the VHS model, should be used to establish generic delisting criteria, such as those for toxic metals present in residues generated by the high temperature metals recovery (HTMR) processing of high zinc K061. This commenter, however, believed that the scaling factor of 20 greatly exaggerates the potential ground-water contamination associated with the use of HTMR slag as a road base, since the slag will not be placed at the same site for a period of 20 years.

Response: EPA believes that this comment is not germane to Reynolds' delisting decision and notes that the comment seems to be based on information presented in a recent Agency rulemaking establishing treatment standards for K061 electric arc furnace dust (see 56 FR 41164, August 19, 1991). EPA has not proposed the use of EPACML in evaluating this disposal scenario, nor has it solicited comments on the use of waste as a road base material. Furthermore, the Agency notes that it has no indication that Reynolds' waste would be used as road base and therefore, believes that disposal at the same site for 20 years is the most reasonable worst-case assumption for Reynolds' waste.

h. Waste Volume Considerations for Stabilized Wastes

Comment: One commenter believed that the use of EPACML DAFs will make it more difficult to delist a waste that has been stabilized and that the disincentive to dilution will actually be a disincentive to stabilization when it increases the volume of a waste.

Response: The Agency believes that if the waste has been efficiently stabilized, any volume increase resulting from stabilization may not be significant. Proper stabilization should ensure that hazardous constituents will not leach out using the TCLP and allow the waste to qualify for delisting despite any increase in volume as a result of stabilization. However, the commenter provided no data suggesting that any increase in volume from stabilization would significantly impact the likelihood of delisting, therefore, the

Agency could not conduct a more quantitative evaluation of the effects of stabilization of volume increases. In the case of Reynolds' waste, the treated material did not, in fact, exceed levels of regulatory concern based on the EPACML, despite the increase in volume.

i. Surface Impoundment Waste Volume

Comment: One commenter believed that the use of the "stored liquid volume" for surface impoundment wastes is arbitrary and capricious. The commenter stated that EPA should use only the volume of hazardous waste in the surface impoundment and that volume of liquid should not be included in the volume used in the modeling evaluation. The commenter stated that if the liquid and solid fractions are to be handled differently (such as by removing and dewatering the sludge), the delisting should be handled separately, i.e., the volume evaluated should be the volume of the waste removed.

Response: The Agency notes that this comment is not germane to Reynolds' delisting petition because the Reynolds petition is for a solid (not liquid) waste, and the Agency views the landfill disposal scenario as the most reasonable, not surface impoundment disposal. The Agency intends, when appropriate, to evaluate one-time volumes of combined liquid and solid wastes disposed of in surface impoundments by sizing surface impoundments based on the reported volume of stored liquid and solid wastes. This approach is not arbitrary and capricious, but rather, based on actual reported volumes. The Agency also believes that it is expected that contaminants may mix with the entire volume of liquid present in the impoundment. The use of the "stored liquid volume" is therefore justified if a submitted petition is for combined liquid and solid wastes to be managed as a whole. The Agency notes that a facility can, in fact, submit a separate petition for a one-time exclusion for the solid fractions (i.e., settled sludge) removed from an existing impoundment. In this case, the Agency agrees with the commenter that the petitioner could excavate and dewater the sludge, and then test the resulting solids and liquid separately in an attempt to delist the solid and liquid fractions separately. In this case, the Agency would likely evaluate the volume of the dewatered sludge under a landfill scenario, but would still evaluate the liquid phase under a surface impoundment scenario.

j. Disposal Scenario Assumptions

Comment: A few commenters noted the assumption that the landfill's liner and cap will completely fail, combined with many other worst-case assumptions, fails to account for highly engineered state-of-the-art landfills and represents an unrealistic scenario, not a reasonable worst-case scenario. Another commenter believed that the uncapped landfill assumption greatly exaggerates the degree of ground-water contamination that could result from the use of HTMR slag as road base. The commenters suggested that the Agency reconsider the use of these assumptions and try to establish more realistic assumptions.

Response: The Agency notes that the EPACML does incorporate effects of a landfill soil cap in the modeling analyses. This is done indirectly through the assignment of infiltration rates calculated with the HELP model (see Ref. 1, 56 FR 32996) using different types of solids (e.g., silty loam, silty clay loam, sandy loam). The Agency agrees that highly engineered landfills exist, but believes that wastes may not always be disposed of in highly-engineered, lined landfill systems that would effectively preclude the vertical migration of leachate. The Agency believes that a reasonable worst-case scenario consists of a subtitle D municipal waste landfill disposal scenario, and that the more sophisticated liners may eventually fail with time. Therefore, the Agency believes that it is appropriate to use the EPACML to evaluate plausible scenarios which might enhance the migration potential of hazardous constituents.

k. Use of the Infinite Source Assumption

Comment: A few commenters believed that the use of the infinite source assumption is unnecessary because data and modeling techniques are available to determine the leaching potential of any constituent in a waste disposal unit. One commenter urged EPA to abandon the infinite source assumption and more accurately determine, on a site-specific basis, the total volume of a particular constituent in a waste management unit. Another commenter suggested that the Agency check the validity of the infinite source assumption for each constituent modeled for the volume of waste that is assumed to be disposed. The same commenter also suggested that EPA decrease the scaling factor of 20 used to estimate the accumulation of wastes over multiple years to reflect the real-world dissipation and decay process. This commenter proposed that a more accurate method for deriving a scaling factor would include an adjustment for the mass of chemical removed based on

the surface area of the landfill, the amount of rainfall, and the projected leachate concentration.

Response: EPA recognizes that, under some specific site conditions, the infinite source assumption may not hold true for some constituents subject to degradation. However, the Agency does not believe that there are sufficient data available at present to support the use of a finite-source model. The Agency is currently evaluating methods to address finite-source constituents and may consider use of these methods when they become available. However, the Agency believes that since the large majority of contaminants are stable under most subsurface conditions and will behave as an infinite source, this is an appropriate reasonable worst-case assumption. Furthermore, the commenters did not provide any specific data that indicated that an infinite source assumption would not be appropriate for the constituents evaluated for Reynolds' waste.

l. Biodegradation, Adsorption, and Metals Speciation

Comment: Some commenters encouraged EPA to refine and upgrade the EPACML to incorporate the phenomenon of attenuation brought about by other minerals in the soil (such as iron oxides) in addition to that of organic carbon. Several commenters recommended that biodegradation be considered. Several commenters suggested that, since delisting is a waste-specific regulatory action, EPA should use chemical-specific adsorption isotherms when they are available.

Response: The EPACML already handles different types of sorption reactions, as long as they follow a linear equilibrium isotherm. At the present time, there are insufficient data available to the Agency for general soil minerals (e.g., clay minerals, iron oxides) to accurately model nonlinear sorption processes. In addition, none of the commenters provided specific data or procedures to allow incorporation of such sorption mechanisms in delisting evaluations. Therefore, the Agency assumed a reasonable worst-case scenario. EPA also recognizes that biodegradation can occur in the subsurface and has finalized a testing protocol for the development of biodegradation rates for use in the EPACML. Although the protocol was published on June 15, 1988 (55 FR 22300), the Agency still does not have sufficient data to develop a nationwide distribution of biodegradation rates for any of the organic contaminants of concern.

Comment: One commenter believed that the use of the linear equilibrium

adsorption isotherm is overly conservative and is based on very idealistic analysis of existing literature data. This commenter believes further that the equilibrium partitioning approach is misused as it does not take into consideration the heterogeneity of soil and aquifer material.

Response: The Agency agrees that the assumption of linear equilibrium sorption is a simplifying assumption, given the complexity of chemical adsorption reactions in heterogeneous soil and aquifer materials. As a result, it is expected that the use of a linear equilibrium adsorption isotherm may be conservative in some cases, depending more on the magnitude of the distribution coefficients used, rather than on the linearity assumption. Heterogeneity in aquifer adsorption effects is implicitly considered in the application through the Monte Carlo incorporation of distribution coefficients. The Agency believes this conservative assumption is appropriate, especially given possible kinetic limitations on sorption reactions in flowing ground-water systems.

Comment: One commenter believed that the handling of metals transport by the EPACML model does not account for precipitation reactions in the subsurface and is therefore unrealistic. The commenter recognized that the Agency is considering the use of the Mineral Thermal Equilibrium (MINTEQ) model to predict metals concentrations in the subsurface and considers this a positive step.

Response: The Agency is currently conducting research on the methodology and developing data to use the MINTEQ model for metals in association with the EPACML. When these results are available, the Agency may consider its use, as appropriate.

m. Other Modeling Assumptions

Comment: One commenter suggested that EPA should ensure that unrealistic or impossible combinations of input variables are not used in the EPACML. The commenter stated that the pairing of inconsistent model parameters may produce unreasonable results and that information on the parameters generated is not publicly available. The commenter recommended that EPA identify sets of realistic parameter combinations and document that these are indeed realistic combinations.

Response: The Agency points out that the EPACML does check for impossible combinations of input variables and these are rejected in the Monte Carlo analysis; however, EPA does not have enough data to develop comprehensive cross-correlations of input variables for

use in the Monte Carlo analysis. The Agency believes that the 95th percentile DAF represents a conservative yet reasonable worst-case combination of input parameters, and that the Monte Carlo approach used will prevent unrealistic combinations of input parameters from controlling the output of the model. The Agency also points out that information on the input parameters is publicly available in the Background Document for the EPACML (see Ref. 2, 56 FR 32997). Moreover, as indicated in the proposal to today's rule (56 FR 32997), an independent review of the distributions of input parameters concluded that range of input parameter values and distributions used by the EPACML are similar to the results of an independent nationwide survey.

Comment: One commenter believed that the assumption of one-dimensional steady and uniform advective flow ignores the variable nature of precipitation and the resultant potential volumes of leachate that may be generated. The same commenter recommended that EPA compare the results of the Hydrologic Evaluation of Landfill Performance (HELP) model with more sophisticated numerical codes that more accurately predict the rate and movement of fluids in heterogeneous landfill systems.

Response: The comment does not make clear whether it is directed to the unsaturated zone or saturated zone assumptions of EPACML. The assumption of steady state, one-dimensional flow is made in both the unsaturated and saturated modules of EPACML. The assumption of one-dimensional steady state flow through the unsaturated zone is reasonable provided that the area of the source (landfill) is not too small. There is a substantial body of literature that indicates that use of such an assumption for unsaturated zone flow is reasonable and will not lead to great errors in transport predictions. Site-to-site variations in precipitation rates and volumes of leachate are accommodated through the Monte Carlo analysis in which the precipitation rate is treated as a random parameter based on nationwide data collected by the Agency.

The use of a steady state flow assumption for saturated zone ground-water flow is also justified, since the model considers transport over long-term average conditions. Actual temporal fluctuations of ground-water flow rates due to seasonal variations of precipitation will occur over much shorter time periods than considered in the model. The assumption of one-dimensional ground-water flow is

justified for the landfill waste disposal scenario in which the rate of leakage through the facility is of the same order or less than the regional recharge rate. Under this assumption, the ambient ground-water flow is not greatly impacted by the effects of recharge.

While the Agency acknowledges that other numerical codes exist to predict contaminant migration through landfills, it believes that the HELP model is adequate for the purposes of the delisting EPACML modeling effort. The Agency has conducted several studies to validate and verify the HELP model results using both field-scale physical models and data from actual landfill sites. These studies have been directed towards evaluating both individual model components and the model as a whole and show reasonable agreement between model predictions and field data; no consistent trends of overestimation or underestimation of landfill water balance parameters were seen. See EPA publications EPA-600/2-87-049, "Verification of the Lateral Drainage Component of the HELP Model Using Physical Models", 1987a; and EPA-600/2-87-050, "Verification of the HELP Model Using Field Data", 1987b. Some researchers also supported the use of the HELP model (Schroeder, P. R. and R. L. Peyton, "Field Verification of Help Model for Landfills", Journal of Environmental Engineering, Vol. 114, No. 2, 1988). Considering this observation and the Monte Carlo approach to using the model in developing the TC regulations, it is likely that any errors associated with specific model runs will average out over the course of the Monte Carlo analysis.

n. Use of the 95th Percentile DAFs

Comment: One commenter believed that the use of the 95th percentile for all input parameters does not represent a reasonable worst-case disposal scenario, but rather an improbable or impossible scenario. One commenter believed that EPA's proposal of a 95th percentile cutoff level for the DAF (while an 85th level was used in the Toxicity Characteristic rule) is logically inconsistent and unnecessarily stringent. This commenter stated that under conditions of greater certainty (in the input parameters) the DAF percentile should be decreased to the 85th percentile. One 95th percentile commenter recommended that the DAF for delisting should not be set below 100 and that DAFs below 100 are inconsistent with EPA's approach to listing hazardous wastes and are more conservative than DAFs used to identify wastes under the TC rule. The commenter stated that delisting employs risk levels when

evaluating carcinogens that are in order of magnitude lower for delisting than for the TC. Another commenter believed that EPACML still produces a highly conservative estimate of contamination in a drinking water well and that selection of the upper 85th percentile DAF probability distribution is sufficiently conservative for delisting levels as it is for setting TC regulatory levels.

Response: The Agency would like to clarify that the Monte Carlo procedure used by the EPACML does not use 95th percentile values of each input parameter, but rather selects values from the entire range of possible values for each input parameter. The output resulting from multiple simulations using this full range of input parameter values is a single distribution of DAFs and the Agency selects the 95th percentile DAF from this distribution.

The use of the Monte Carlo procedure does account for the fact that some of the parameter values selected may represent 50th percentile values while the values of other parameters for the same simulation may represent different percentiles. The Agency points to an independent review of EPACML input parameters that concluded that the range of values used are sound (see Ref. 5 in 56 FR 32977).

The Agency maintains that the goals of the characteristics program are different from those of the delisting program and that it is appropriate for delisting to be more stringent than characteristics (56 FR 32998). Characteristics levels are those equal to or above which a waste is clearly hazardous, delisting regulatory levels are those below which a waste is clearly nonhazardous. The Agency believes that the 95th percentile DAFs developed for delisting are representative of reasonable worst-case disposal scenarios and are appropriate for use in delisting evaluations, such as in the case of Reynolds' petition. The commenters did not demonstrate that the 95th percentile cutoff level is inappropriate.

Comment: One commenter stated that the comparison of the DAF percentile to multiple well comparisons for ground-water monitoring data is a weak argument since the DAF percentile and ground-water data are derived in fundamentally different ways using scientifically and statistically different approaches.

Response: With regard to the confidence level or level of statistical significance, the Agency acknowledges that the approach used to estimate DAFs differs from the approach used for multiple ground-water monitoring well

comparisons. However, the Agency believes that the goals of each evaluation are similar: *i.e.* to state with a degree of statistical certainty that a statistical hypothesis holds true. In any case, the Agency continues to believe that use of the 95th percentile DAFs is appropriate in order to ensure delisted wastes are non-hazardous.

3 Final Agency Decision

For the reasons stated in the proposal and described above, the Agency believes that Reynolds' kiln residue should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Reynolds Metals Company, located in Bauxite, Arkansas, for its kiln residue to be generated at its R.P. Patterson facility in Gum Springs, Arkansas described in its petition as EPA Hazardous Waste No. K088.

This exclusion initially applies only to the kiln residue generated by one rotary kiln at Gum Springs, Arkansas, during the treatment of spent potliner produced by Reynolds' four primary aluminum reduction facilities (*i.e.*, Massena, New York; Longview, Washington; Troutdale, Oregon; and Baie Comeau, Quebec). This exclusion will apply to kiln residues generated from a second kiln at the site, or residues from the treatment of spent potliners from other primary aluminum production facilities, only if the requirements in Condition (5) are satisfied. The maximum annual volume of kiln residues covered by this exclusion is a total of 300,000 cubic yards for all treatment kilns operated by Reynolds.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their

own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective December 30, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide good cause for making this rule effective immediately under the Administrative Procedure Act, 5 USC 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 601-612, whenever an

agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and Recordkeeping Requirements.

Dated: December 19, 1991.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 USC 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Reynolds Metals Company.....	Gum Springs, Arkansas.....	<p>Kiln residue (generated at a maximum annual volume of 300,000 cubic yards per year) from rotary kiln treatment of spent potliners (EPA Hazardous Waste No. K088). This exclusion was published on December 30, 1991. This exclusion does not apply to electrostatic precipitator dust generated by the rotary kiln. This exclusion initially applies only to the treatment by one rotary kiln of potliners generated by Reynolds Metals' four primary aluminum facilities (Massena, New York; Longview, Washington; Troutdale, Oregon; and Baie Comeau, Quebec) described in the petition. Reynolds may only accept spent potliners from other sources, or modify its treatment process, or add an additional rotary kiln in accordance with Condition (5). This exclusion is conditional upon the submission of data obtained from each rotary kiln after it is established at the R.P. Patterson facility in Gum Springs, Arkansas. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern while the treatment facility is in operation, Reynolds must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid:</p> <p>(1) <i>Operating Conditions:</i></p> <p>(A) <i>Initial Verification Testing:</i> During the first 20 days of full-scale operation of the rotary kiln, at typical operating conditions, Reynolds must monitor and submit to EPA the rotary kiln operating conditions (including, but not limited to: Temperature range of the kiln (hot and cold end), kiln residue exit temperature, spent potliner feed rate, brown sand feed rate, limestone feed rate, natural gas feed rate, oxygen/air feed rate, and rotary kiln residence time of the raw materials). The ratio of the spent potliner feed rate to the combined feed rates of the spent potliner, brown sand, and limestone must be no more than 0.35. Information on all other operating conditions should encompass all conditions used for preliminary testing runs and those anticipated for subsequent waste processing. During initial verification testing, the petitioner must also demonstrate to EPA how the range of operating conditions could affect the process (i.e., submit analyses of representative grab samples, as specified under Condition (2), of the kiln residue generated under the expected range of operating conditions). The source of the brown sand must be from Reynolds' dry lake beds at the Bauxite, Arkansas facility. Reynolds must submit the information specified in this condition and obtained during this initial period no later than 90 days after the treatment of the first full-scale batch of spent potliner.</p> <p>(B) <i>Subsequent Verification Testing:</i> During subsequent verification testing, Reynolds must monitor the performance of the rotary kiln at all times to ensure that it falls within the range of operating conditions demonstrated during initial verification testing, to be adequate to maintain the levels of hazardous constituents below the delisting levels specified in Condition (4). The feed rates of spent potliner, lime and brown sand are to be as that described in Condition (1)(A). Records of the operating conditions of the rotary kiln (including, but not limited to: Temperature range of the kiln, kiln residue exit temperature, spent potliner feed rate, brown sand feed rate, limestone feed rate, natural gas feed rate, oxygen/air feed rate, and rotary kiln residence time of the raw materials) should be maintained on site for a minimum of five years. This information must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Arkansas.</p> <p>(2) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. For fluoride, samples must be analyzed using Method 340.2 from "Methods for Chemical Analysis of Water and Waste". If the EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Reynolds may replace the testing required in Condition (2)(A) with the testing required in Condition (2)(B). Reynolds must continue to test daily composites of kiln residue generated beyond the time period specified in Condition (2)(A) until and unless notified by EPA in writing that testing in Condition (2)(A) may be replaced by Condition (2)(B) (to the extent directed by EPA).</p> <p>(A) <i>Initial Verification Testing:</i> During the first 20 operating days of full-scale operation of the new on-line rotary kiln, Reynolds must collect and analyze daily composites of kiln residue. Daily composites must be composed of representative grab samples collected every 6 hours during each 24-hour kiln operating cycle. The kiln residue samples must be analyzed, prior to the disposal of the kiln residue, for all constituents listed in Condition (4). Reynolds must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch of untreated spent potliner.</p> <p>(B) <i>Subsequent Verification Testing:</i> Following notification by EPA, Reynolds may substitute the testing conditions in (2)(B) for (2)(A). Reynolds must collect and analyze both daily and weekly composites of kiln residue. Daily composites must be composed of representative grab samples collected every 6 hours during a 24-hour kiln operating cycle and these samples must be analyzed, prior to the disposal of the kiln residue, for leachable concentrations of cyanide and fluoride. Weekly composites must be composed of representative grab samples collected every 6 hours during a 24-hour kiln operating cycle for each day in the week that the kiln is operating. The weekly samples must be analyzed, prior to the disposal of the kiln residue, for the leachable concentrations of the inorganics listed in Condition (4)(A) and leachable levels of the semi-volatile organic compounds listed in Condition (4)(B). Analyses of both daily and weekly samples must be completed prior to the disposal of waste generated during that week as set forth in Condition (3). The analytical data, including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Arkansas.</p> <p>(3) <i>Waste Holding and Handling:</i> Reynolds must store, as hazardous, all kiln residue generated until verification testing (as specified in Condition (2)(A) and (2)(B)) is completed and compared, by the petitioner, with the delisting levels set forth in Condition (4). If the levels of hazardous constituents measured in the samples of kiln residue generated do not exceed any of the levels set forth in Condition (4), then the kiln residue is non-hazardous and may be managed and</p>

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any daily or weekly sample exceed any of the delisting levels set in Condition (4), the kiln residue generated during the time period corresponding to this sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA. Kiln residue which is generated but for which the required analysis is not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analysis demonstrates that Condition (4) is satisfied.
		(4) <i>Delisting Levels:</i> All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24.
		(A) The leachable concentrations for metals may not exceed the following levels (ppm): arsenic, selenium, or silver—0.60; barium—12.0; antimony—0.12; lead—0.18; cadmium—0.06, chromium or nickel—1.2; mercury—0.024; beryllium—0.012; fluoride—48.0; and cyanide—2.4 (cyanide extraction must be conducted using deionized water).
		(B) The leachable constituent concentrations for organics may not exceed the levels listed below (ppm):
		Acenaphthene—24
		Benz(a)anthracene— 1.2×10^{-4}
		Benzo(b)fluoranthene— 2.4×10^{-4}
		Benzo(a)pyrene— 2.4×10^{-3}
		Chrysene— 2.4×10^{-3}
		Fluoranthene—12
		Indeno (1,2,3-cd)pyrene— 2.4×10^{-3}
		Pyrene—12
		(5) <i>Changes in Operating Conditions and Waste Sources:</i> If after completing the initial verification test period in Conditions (1)(A) and (2)(A), Reynolds decides to treat spent potliner from any other primary aluminum reduction facility; or use a new source for brown sand; or otherwise significantly change the operating conditions developed under Condition (1); then Reynolds must notify EPA in writing prior to instituting the change. Reynolds must also reinstitute the testing and reporting required in Conditions (1)(A) and (2)(A) for a minimum period of four operating days and fulfill all other requirements in Conditions (1) and (2), as appropriate. Reynolds may also add one additional kiln at its R.P. Patterson facility in Gum Springs, Arkansas if it can demonstrate that the new kiln can successfully treat spent potliners. Reynolds must fulfill all requirements contained in Conditions (1) and (2) for the second kiln. Reynolds must continue to test any kiln residue generated beyond the time period specified in Condition (2)(A) until and unless notified in writing by EPA that testing Condition (2)(A) may be replaced by (2)(B) to the extent directed by EPA.
		(6) <i>Data Submittals:</i> Reynolds must notify in writing the Section Chief, Delisting Section (see address below) when the rotary kiln is on-line and two weeks prior to when waste treatment will begin. The data obtained through Conditions (1)(A) and (2)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS-333), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. At the Section Chief's request, Reynolds must submit any other analytical data obtained through Conditions (1)(B) and (2)(B) within the time period specified by the Section Chief. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:
		"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.
		"As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.
		"In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 91-31150 Filed 12-27-91; 8:45 am]
BILLING CODE 5500-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 205, 209, 211,
214, 215, 217, 219, 222, 223, 225, 226,
227, 231, 232, 233, 237, 239, 242, 243,
245, 249, 250, 252, 253, and
Appendix G

[Defense Acquisition Circular (DAC) 91-1]

Department of Defense Acquisition
Regulations; Miscellaneous
Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final and interim rules.

SUMMARY: Defense Acquisition Circular (DAC) 91-1 amends the Defense FAR Supplement (DFARS) (1991 Edition) coverage on contractor identification systems, acquisition and distribution of commercial products, evaluation of acquisitions for services and uncompensated overtime, historically black colleges and universities and minority institutions, Pilot Mentor-Protege Program, hazardous material identification, drug-free work force, expiration of restrictions on Toshiba/Kongsberg, restriction on air circuit breakers for naval vessels, restriction on antifriction bearings, offset administrative costs, IR&D/B&P costs, customary progress payment rates, GAO protest regulations, contracting officer final decisions, parcel post eligible shipments, notifications of substantial impact on employment, plant clearance duties, and announcement of contract awards.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, Defense Acquisition Regulations System, OUSD(A), The Pentagon, Washington, DC 20301-3000, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:**A. Background**

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The December 31, 1991 revision of the CFR is the most recent edition of that title.

The interim rules included in DAC 91-1 (Items IV, V, XI, and XVII) were published previously in the *Federal Register* for public comment. Their publication in DAC 91-1 does not constitute a request for comment.

Item IV is a revision of the interim rule published April 12, 1991 (56 FR 18610).

Item V was published September 5, 1991 (56 FR 43986) and amended September 30, 1991 (56 FR 49506).

Item XI was published December 9, 1991 (56 FR 64211).

Item XVII was published October 18, 1991 (56 FR 52440).

B. Regulatory Flexibility Act

DAC 91-1 Items IV, V, VI, VII, IX, XII, XIII, XIV, XV, XVI, XVII, and XX

These rules were published as either interim or final rules in DAC 88-19 (56 FR 60066). They are included in this DAC in substantially the same form as in DAC 88-19, except for minor editorial revisions which do not constitute significant revisions within the meaning

of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

DAC 91-1, Items I, II, III, VIII, X, XVIII, XIX, XXI, XXII, and XXIII

These informational items and final rules do not constitute significant revisions within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

DAC 91-1 Item XI

This item was published for public comment on December 9, 1991 (56 FR 64211). Public comments received in response to that notice will be considered in development of the final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this DAC do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and Appendix G

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

(Defense Acquisition Circular No. 91-1, dated December 31, 1991)

All Defense FAR Supplement and other directive material contained in this circular is effective December 31, 1991, unless otherwise specified in the Item summary.

Defense Acquisition Circular (DAC) 91-1 amends the Defense FAR Supplement (DFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Revision of Activity Address Codes and Call/Order Codes

For information and planning purposes, a proposed revision of DFARS Subpart 204.70, Uniform Procurement Instrument Identification Numbers, is included in this DAC as Attachment I. Effective October 1, 1993, the Activity Address Codes contained in DFARS appendix G will be replaced by the DoD Activity Address Codes in DoD 4000.25-D, DoD Activity Address Directory, and

the two position call/order code will be replaced by the numbering system specified in the proposed revision of DFARS subpart 204.70. Appendix G will be eliminated at that time. Formal notice of these proposed changes will be published for public comment at a later date.

Item II—Contractor Identification Systems

DFARS 204.7202-2 and 204.7204-2 are revised to incorporate the new contractor identification numbering system that will become effective in January 1992. Also, several editorial clarifications have been made in 253.204-70. Both the new system and the old system (DUNS numbers) may be used through the end of fiscal year 1992. The new system must be used for reporting in fiscal year 1993 and after.

Item III—Debarment Decisions

The eight factors in 209.406-1(d) of the 1988 edition of DFARS, that are to be considered in making a debarment decision are being incorporated in FAR by FAC 90-09 and for this reason do not appear in the 1991 edition of DFARS.

Item IV—Acquisition and Distribution of Commercial Products

Departmental Letter 91-020, issued September 26, 1991, advised that the clause at 252.211-7005, Limitation of Liability, may not be appropriate for use in all contracts for commercial items and shall not be used in part 211 contracts, pending issuance of the part 211 final rule. Consequently, the clause at 252.211-7005 and its prescription in 211.7005(a)(25) have been deleted.

Until final rule is published, in contracts for commercial automatic data processing equipment, contracting officers shall follow the guidance at FIRM 201-39.4601 and shall use the clause at FIRM 201-39.5202-6, "Warranty Exclusion and Limitation of Damages," unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

In contracts for all other commercial items, contracting officers are to follow the guidance at FAR subpart 46.8, and may use the Limitation of Liability clauses at FAR 52.246-23 and 52.246-24 or other liability clauses authorized for use by a Military Department or Defense Agency.

Item V—Evaluation of Acquisitions for Services and Uncompensated Overtime

Departmental Letter 91-017, dated August 19, 1991, revised DFARS subparts 215.6 and 237.1 and added a

solicitation provision entitled "Identification of Uncompensated Overtime" as interim implementation of section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). Section 834 requires the Secretary of Defense to issue regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours provided. These interim DFARS revisions include guidance on evaluation of service acquisitions and on factors to consider in evaluating proposals to ensure that the use of uncompensated overtime does not degrade the level of technical expertise required. Language and a solicitation provision have been added on the use of uncompensated overtime. The new provision at 252.237-7019 is to be used in all solicitations estimated at \$100,000 or more for services to be acquired on the basis of the number of hours to be provided.

Item VI—Historically Black Colleges and Universities and Minority Institutions

DFARS 219.705-2, 226.7000, and 226.7002 are revised to implement section 832 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). Section 832 provides for further enhancement of opportunities for participation of historically black colleges and universities and minority institutions in DoD programs.

Item VII—Pilot Mentor-Protege Program

Departmental Letter 91-016, dated July 31, 1991, revised DFARS 232.412 and added subpart 219.71 and a clause entitled Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, to implement section 831 of the FY 1991 Defense Authorization Act (Pub. L. 101-510), as amended. Section 831 required that DOD establish a test program offering incentives to major contractors which provide developmental assistance to small disadvantaged businesses. Policy and procedures for operation of the test program are described in detail in a DoD policy document entitled "DoD Policy for the Pilot Mentor-Protege Program," a copy of which was included in Defense Acquisition Circular 88-19.

Item VIII—Hazardous Material Identification

DFARS 223.302 and 223.303 are revised and 223.71 and the clauses at 252.223-7000 and 252.223-7004 are deleted as the language was incorporated in FAR by Item IV of FAC 90-08.

Item IX—Drug-Free Work Force

This final rule replaces the interim rule at subpart 223.5 and 252.223-7005, which is redesignated as 252.223-7004. It removes all language that duplicated the Drug-Free Workplace rule in FAR subpart 23.5 and it eliminates any ambiguity as to whether drug testing is required.

Item X—Expiration of Restrictions on Toshiba/Kongsberg

DFARS subpart 225.10 is deleted in consonance with the deletion of FAR subpart 25.10.

Item XI—Restriction on Air Circuit Breakers for Naval Vessels

DFARS Subpart 225.70 is amended to add the restriction on acquisition of air circuit breakers for naval vessels imposed by section 1421 of the fiscal year 1991 Defense Authorization Act (Pub. L. 101-510).

Item XII—Restriction on Antifriction Bearings

The restriction in the 1988 edition of the DFARS at 208.7902 on the acquisition of antifriction bearings has been extended from September 30, 1991 until December 31, 1992. DFARS 225.7103 is amended by adding paragraph (h) to recognize the December 31, 1992 limitation on the restriction.

Item XIII—Offset Administrative Costs

DFARS subpart 225.73 language on cost of doing business with a foreign government was revised on an interim basis by Departmental Letter 91-015, dated July 15, 1991, to permit defense contractors to recover allowable offset administrative costs from foreign governments under foreign military sales contracts. This revision of DFARS 225.7303-2(a)(2)(iii) supersedes and finalizes the interim rule.

Item XIV—IR&D/B&P Costs

DFARS parts 225, 231, and 242 were revised by a final rule issued by Departmental Letter 91-018. The rule implements Section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101-510) by incorporating the new, broader standard for IR&D/B&P projects which are of "potential interest to DoD." DFARS 225.7303-2(b) was revised to remove an inconsistency that currently exists with 255.7303-2(c). DFARS 225.7303-2(c) was revised to correct an erroneous reference to IR&D/B&P ceiling limitations or formula constraints as being contained in DFARS part 231, rather than in FAR part 31. DFARS 231.205-18 incorporates the new, broader legislative standard for IR&D/B&P projects which are of "potential

interest to DoD," including the specific examples of such projects listed in 10 U.S.C. 2372(c). DFARS 242.1005(a) was added to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing appropriate guidance to contractors for submission of technical information to support IR&D proposals. DFARS 242.1005(b) was revised to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing contracting officers with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD. DFARS 242.1005(c), 242.1006, and 242.1007 were revised to incorporate the new standards of "potential interest to DoD" and to otherwise satisfy the requirements of 10 U.S.C. 2372.

Item XV—Customary Progress Payment Rates

DFARS 232.5 was revised and a clause entitled DoD Progress Payment Rates was added by Departmental Letter 91-014 to implement DoD's customary uniform progress payment rates for contracts awarded July 1, 1991 through March 31, 1992. Rates for subsequent years will be published in the first quarterly DAC for the calendar year. The customary uniform rates for July 1, 1991 through March 31, 1992, are 85 percent for large business, 90 percent for small business, and 95 percent for small disadvantaged business. This change does not affect progress payment rates for the repair, maintenance, or overhaul of naval vessels which are governed by rates established by the Secretary of the Navy in accordance with 10 U.S.C. 7312, as amended. For flow-down to subcontractors, refer to (j)(4) of the progress payments clause at FAR 52.232-16.

Item XVI—GAO Protest Regulations

This is a final rule which implements the General Accounting Office's (GAO) revised protest procedures (4 CFR part 21), which went into effect on April 1, 1991. The DFARS language covers only those portions of GAO's revised rules which pertain to contracting officers and is to be used until a permanent FAR change is made.

DFARS 233.104, which is a substantial rewrite and is to be used in lieu of FAR 33.104, implements GAO's revised procedures, presents procedures in a more logical order, and makes other editorial improvements. The most significant procedures address the information an agency is required to provide to GAO, protective orders

issued by GAO, and formal fact-finding hearings.

Agency reports to the GAO must now include all evaluation documents. In addition, agencies must also make available to GAO any document specifically requested by the protestor. GAO's new rules provide interested parties with easier access to documents. Accordingly, DFARS 233.104(a)(5) addresses requests for, and GAO issuance of, protective orders to limit the right to use and disclose released documents. DFARS 233.104(e) gives notice of GAO's formal fact-finding hearings, with minimal discussion of the detailed procedures.

Item XVII—Contracting Officer Final Decisions

This interim rule was issued by Departmental Letter 91-021. It adds section 233.211 to require contracting officers to insert a "note" in all contracting officer final decisions, immediately following the paragraph required by FAR 33.211(a)(4)(v). The note advises the contractor to refer to a recent Circuit Court decision which may affect the contractor's choice of a forum for appeal.

Item XVIII—Effective Date of DFARS Part 241

DFARS part 241, Acquisition of Utility Services, included in the 1991 edition, shall not be used until publication of FAR part 41, Acquisition of Utility Services, in a Federal Acquisition Circular. The effective date of DFARS part 241 will be announced in a forthcoming Defense Acquisition Circular. It is anticipated that the final rule on FAR Part 41 will be published by April 15, 1992. Until DFARS part 241 becomes effective, continue to use ASPR Supplement #5, Procurement of Utilities Services, with the provisions and clauses prescribed by FAR and DFARS, as appropriate for each acquisition.

Item XIX—Parcel Post Eligible Shipments

DFARS 242.1404-1 is added to provide a reference to DoD 4525.8-M, DoD Official Mail Manual.

Item XX—Notification of Substantial Impact on Employment

DFARS subparts 243, 249, 252, and 253 are revised to implement section 4201 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). Section 4201 requires the Secretary of Defense to notify the Secretary of Labor if the modification or termination of a major defense contract or subcontract will have a substantial impact on employment.

The rule requires reporting on modifications or convenience terminations of prime contracts valued at \$5 million or more, or subcontracts of \$500,000 or more, which will have a substantial impact on employment. Contracting officers must either modify existing contracts to incorporate the clause at 252.249-7001, Notification of Substantial Impact on Employment, or tailor any termination notices that are subsequently issued against these contracts to request the contractor to provide a statement of impact on employment.

Item XXI—Plant Clearance Duties

DFARS 245.603-70(a) is amended to eliminate the requirement for a plant clearance officer to be on site in order to authorize the contractor to perform plant clearance functions.

Item XXII—Announcement of Contract Awards

DFARS 205.303(a) is revised to change the instructions on reporting awards for public announcement. The basis for determining whether an award must be reported has been changed from contract obligations to contract face value.

Item XXIII—Editorial Revisions

(a) The name of the Defense Communications Agency has been changed to the Defense Information Systems Agency. DFARS has been amended to reflect the name change.

(b) The definition of "contracting activity" at DFARS 202.101 is amended to correct the name of the Defense Mapping Agency's contracting activity.

(c) DFARS 204.670-8 is amended to update an address.

(d) DFARS 209.403(1) is amended to update the designation of the Navy debarring official.

(e) DFARS 215.811-70(a)(3) is amended to revise "252.215-7001" to read "252.215-7002."

(f) DFARS 215.811-70(c)(1)(i) is amended to revise "252.215-7001" to read "252.215-7002."

(g) DFARS 217.502 is revised to clarify the language.

(h) DFARS 217.7404-4 is amended to change the word "obligations" to read "expenditures."

(i) DFARS 222.101-3(3) is amended to revise "RCS DD I&L (AR) 1153" to read "RCS DD P&L (AR) 1153."

(j) DFARS 225.102(b)(ii) is amended for clarification.

(k) DFARS 225.703 is amended for clarification.

(l) DFARS 225.802-70(a) and (b)(1) are amended to revise "administrtion" to read "administration."

(m) DFARS 225.7101 is amended to revise "252.225-7022" to read "252.225-7025."

(n) DFARS 227.403-77 is amended for clarification.

(o) DFARS 231.7003-1(a)(2)(i) is amended by changing "or" to "and."

(p) DFARS 245.104(a) is amended by revising "DoD 4275.5-M" to read "DoD 4161.2-M."

(q) DFARS 250.201-70(b)(2) is amended to update the approval authority for indemnification against unusually hazardous or nuclear risks.

(r) The date "May 1991" is added to the clause at 252.211-7019.

(s) DFARS 252.211-7019 is amended by changing the designation paragraph "a)" to read paragraph "(a)".

(t) DFARS 252.225-7006 is amended by revising in paragraph (c)(1)(i) the words "Trade Agreements Act" to read "Buy American Act and Balance of Payments Program".

(u) DFARS 252.225-7009 is amended in paragraph (f)(2)(iv) by removing the quotation marks at the end of the second sentence.

(v) DFARS 252.228-7001 is amended by revising in paragraph (i)(2)(ii) the word "damage" to read "damaged".

(w) DFARS 252.234-7000 is amended by revising the clause title to read "Notice of Cost/Schedule Control Systems (Dec 1991)" in lieu of "Cost/Schedule Control Systems (Dec 1991)".

(x) Paragraph (a)(1) of the clause at 252.239-7000 is amended by revising "NACSIM" to read "NACSEM."

(y) DFARS 253.204-70(d)(5)(i)(H) is amended by revising "Enter Code H" to read "Enter code N."

(z) DFARS 253.204-70(d)(5)(xi)(B)(I) is amended by revising "52.219-7019" to read "52.219-19."

(aa) Part 253 is amended by updating the DD Form 350 and DD Form 1057.

(bb) Appendix G, part 7, is amended by adding an activity address number.

Amendments to Defense FAR Supplement

Therefore, the Defense FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and appendix G continues to read as follow:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and FAR subpart 1.3.

PART 202—DEFINITIONS OF WORDS AND TERMS**202.101 [Amended]**

2. Section 202.101 is amended by revising under the definition entitled "Contracting activity" the entry "Defense Communications Agency, Headquarters, Defense Communications Agency" to read "Defense Information Systems Agency, Headquarters, Defense Information Systems Agency"; by revising under the definition entitled "Contracting activity" the entry "Defense Mapping Agency, Headquarters, Logistics Office" to read "Headquarters, Office of Acquisition, Installations and Logistics"; by revising under the definition entitled "Departments and agencies" the entry "Defense Communications Agency" to read "Defense Information Systems Agency."

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.670-8 is revised to read as follows:

204.670-8 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if security reasons indicate that it is necessary to modify coding of all or any individual blocks on the DD Form 350. If such contact cannot be made for security reasons, obtain instructions from the Office of the Assistant Deputy Under Secretary of Defense for Security Policy, Attn: Assistant for Special Programs. Telephone number is (703) 614-0578/9 or DSN 224-0578/9.

204.7000 [Amended]

4. Section 204.7000 is amended by revising in paragraph (a) the words "Defense Communications Agency" to read "Defense Information Systems Agency."

204.7003 [Amended]

5. Section 204.7003 is amended by revising paragraph (a)(1)(i)(D) to read "Defense Information Systems Agency DISA" in lieu of "Defense Communications Agency DCA."

204.7102 [Amended]

6. Section 204.7102 is amended by revising in paragraph (b)(3) the words "Defense Communications Agency" to read "Defense Information Systems Agency."

204.7202-2 [Amended]

7. Section 204.7202-2 is amended by adding two new sentences after the first sentence in the introductory paragraph to read "For Reporting in Fiscal Year 1992, the CEC may be either a DUNS number or the alphanumeric number in the Government-owned system operated by Dun & Bradstreet. The DUNS number will not be reported beyond FY 1992."; by revising paragraph (c)(1)(i) to read "Telephone (215) 865-0204."; by revising paragraph (c)(1)(ii) to read "Facsimile (215) 882-7295."; by revising paragraph (c)(1)(iii) to read "Writing to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025-0013."; by revising paragraph (c)(2)(ii) to read "Contracting office code assigned by the departmental data collection point and appropriate Agency code as follows: (A) Army activities—2100; (B) Navy activities—1700; (C) Air Force activities—5700; (D) Defense Logistics Agency—97AS; and (E) Other DoD contracting activities—9700."; and by revising paragraph (c)(2)(vi) to read "Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, ZIP code, and telephone number, if applicable."

8. Section 204.7204-2 is revised to read as follows:

204.7204-2 Maintenance of the CEC codes.

Changes, except name changes, may be submitted in writing using company letterhead by the entity identified by the code through the contract administration office, by the contracting office or the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements), using the agency letterhead, by mail, facsimile or electronic equivalent to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025-0013.

Part 205—PUBLICIZING CONTRACT ACTIONS

8.a. Section 205.303 is amended by revising paragraph (a)(i) and paragraph (a)(ii)(D) (1) and (3) to read as follows:

205.303 Announcement of contract awards.

(a) *Public Announcement.*

(i) The threshold for DoD awards is \$5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than \$5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than

\$5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding unexercised options, is more than \$5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than \$5 million.

(C) Do not report the same work twice.

(ii) * * *

(D) * * *

(1) *Contract data.* Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

* * * * *

(3) *Contractor data.* Name, address, and place of performance (if significant work is performed at a different location);

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS**209.202 [Amended]**

9. Section 209.202 is amended in paragraph (a)(1) by revising Defense Communications Agency—Director, Acquisition Management." to read "Defense Information Systems Agency—Director, Acquisition Management".

209.403 [Amended]

10. Section 209.403 is amended by revising under the definition entitled "Debarred official" the entry "Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)" to read "Navy—the General Counsel of the Department of the Navy"; and by revising the entry "Defense Communications Agency—The General Counsel" to read "Defense Information Systems Agency—The General Counsel."

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS**211.7005 [Amended]**

11. Section 211.7005(a)(25) is revised to read " (25) 252.211-7005 Reserved."

214.406-3 [Amended]

12. Section 214.406-3 is amended by revising paragraph (e)(ii)(B) to read "Defense Information Systems Agency: General Counsel, DISA." in lieu of

"Defense Communications Agency: General Counsel, DCA."

PART 215—CONTRACTING BY NEGOTIATION

13. Section 215.605 is amended by adding paragraph (c) to read as follows:

215.605 Evaluation factors.

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(1) The effort being contracted for departs from clearly defined efforts; and
(2) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(1) Services being acquired are of a routine or simple nature;
(2) Highly skilled personnel are not required; and
(3) The product to be delivered is clearly defined at the outset of the acquisition.

14. Section 215.608 is amended by adding paragraph (a) to read as follows:

215.608 Proposal evaluation.

(a) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see 237.170) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

215.811-70 [Amended]

15. Section 215.811-70 is amended by revising the reference in paragraph (a)(3) to read "252.215-7002" in lieu of "252.215-7001"; and by revising the

reference in paragraph (c)(1)(i) to read "252.215-7002" in lieu of "252.215-7001".

PART 217—SPECIAL CONTRACTING METHODS

16. Section 217.502 is revised to read as follows:

217.502 General.

Unless otherwise stated in department or agency regulations, the agency head designee is the contracting officer.

217.7404-4 [Amended]

17. Section 217.7404-4 is amended by revising in the second sentence the word "obligations" to read "expenditures".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

18. Section 219.705-2 is revised to read as follows:

219.705-2 Determining the need for a subcontracting plan.

(d) The extent to which offerors identify and commit to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as joint venture, teaming arrangement, or subcontractor, shall be an evaluation factor in source selection for research and development acquisitions, major systems acquisitions, and other complex or sensitive acquisitions which use formal or alternative source selection procedures.

219.708 [Amended]

19. Section 219.708 is amended by adding a new sentence at the end of paragraph (c)(1)(A) to read "Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit under the Pilot Mentor-Protege Program (see Subpart 219.71).

20. A new subpart 219.71 is added to read as follows:

Subpart 219.71—Pilot Mentor-Protege Program

Sec.

219.7100 Scope.

219.7101 Policy.

219.7102 General.

219.7103 Procedures.

219.7103-1 General.

219.7103-2 Contracting officer responsibilities.

219.7104 Developmental assistance costs eligible for reimbursement or credit.

219.7105 Other forms of assistance.

219.7106 Reporting.

Subpart 219.71—Pilot Mentor-Protege Program

219.7100 Scope.

This subpart implement the Pilot Mentor-Protege Program (the Program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 Policy.

DoD policy for implementation of the Program is contained in a policy statement entitled, "DoD Policy for the Pilot Mentor-Protege Program." This statement addresses the program purpose, general procedures, duration, eligibility requirements, the selection/approval process, the mentor-protege agreement, advance agreements on the treatment of developmental assistance costs, and reporting requirements. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD(A) SADB, room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688.

219.7102 General.

The Program consists of:

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7.

(b) Protege firms, which are small disadvantaged business (SDB) concerns, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through a modification to an existing cost reimbursement contract to establish a separately priced contract line item; or

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs not reimbursed; or

(3) A combination of reimbursement and credit.

219.7103 Procedures.**219.7103-1 General.**

(a) In accordance with the DoD policy statement, a prospective mentor firm shall:

(1) Apply to OUSD(A) SADBUD when seeking credit only or when funding is made available from a DoD program manager to implement a mentor-protege agreement; and

(2) Subsequent to approval as a mentor firm, submit a signed mentor-protege agreement(s) to OUSD(A) SADBUD for approval before developmental assistance costs may be reimbursed through an existing DoD contract or credited against SDB subcontracting goals.

(b) OUSD(A) SADBUD shall have responsibility for:

(1) Approving contractors as mentor firms;

(2) Approving mentor-protege agreements; and

(3) Forwarding the approved mentor-protege agreement to contracting officer(s) when program funding is available through a DoD program manager.

219.7103-2 Contracting Officer Responsibilities.

Contracting officers shall:

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement or delegate this authority to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232-7009, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs—

(1) When funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved Mentor-Protege Agreement.

(e) Advise contractors of reporting requirements (see 219.7106).

219.7104 Developmental Assistance Costs eligible for Reimbursement or Credit.

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. The following costs incurred by mentor firms are eligible for reimbursement or credit:

(1) Assistance to the protege firm by mentor firm personnel in—

(i) General business management including organizational management;

(ii) Financial management;

(iii) Personnel management;

(iv) Marketing;

(v) Business development and overall business planning;

(vi) Engineering and technical matters such as production, inventory control and quality assurance;

(vii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Assistance to the protege firm provided by—

(i) Small Business Development Centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(ii) Entities providing technical assistance pursuant to chapter 142 of title 10 U.S.C.;

(iii) Historically Black Colleges and Universities (HBCUs) as defined by 34 CFR 608.2; and

(iv) Minority Institutions of Higher Education with a student body as specified in 20 U.S.C. 1058(b)(3), (4), and (5).

(b) No profit may be associated with the reimbursement of developmental assistance costs.

(c) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1996.

(d) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(e) Developmental assistance costs incurred before October 1, 1999 by a mentor firm pursuant to an approved mentor-protege agreement, that are not funded either directly or indirectly under any other DoD contract, may be credited towards subcontracting plan goals as follows:

(1) Four times the total amount of developmental assistance costs provided to protege firms by small business development centers, HBCUs, MIs, and entities providing technical assistance (see paragraph (a)(2) of this section);

(2) Three times the total amount of developmental assistance costs incurred by mentor firm personnel (see paragraph (a)(1)(i) through (vi) of this section); or

(3) Two times the total amount of other developmental assistance costs (see paragraph (a)(1)(vii) of this section).

219.7105 Other Forms of Assistance.

(a) Mentor firm subcontracts with protege firms may contain provisions for progress payments up to 100 percent (see FAR 32.504(c)) or advance payments (see 232.412(S-72)). However, DoD will reimburse the mentor firm for advance payments only when such payments have been provided under subcontract terms and conditions similar to FAR 52.232-12, Advance Payments.

(b) In accordance with paragraph (f) of section 831 of Public Law 101-510, mentor firms may award subcontracts to protege firms on a non-competitive basis under DoD or other contracts.

219.7106 Reporting.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually by including with their SF 295, Summary Subcontract Report,

(1) An attachment which identifies—

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, any problem areas encountered, and any other appropriate information; and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 18 of the SF 294 identifying:

(i) the amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental

assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s).

(b) Mentor firms, which are also participants in DoD's comprehensive subcontracting plan test program (see 219.702(a)), shall indicate in Block 16 of the SF 295, Summary Subcontract Report;

(1) the total dollars credited to the SDB goal as a result of developmental assistance provided a protege firm(s) under the Program; and

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

(c) OUSDA(A) SADBUI will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101-3 [Amended]

21. Section 222.101-3 is amended by revising the reference in paragraph (3) to read "RCS DD P&L (AR) 1153." in lieu of "RCS DD I&L (AR) 1153."

PART 223—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

22. Section 223.302 is revised to read as follows:

223.302 General.

(b) Successful offerors are also required to submit hazard warning labels under the clause at 252.223-7001, Hazard Warning Labels.

(c) The contracting officer shall also provide hazard warning labels received from apparent successful offerors to the cognizant safety officer or other designated official in order to facilitate—

(i) Inclusion of relevant data in the department/agency's material safety data sheet information system or label information system; and

(ii) Other control, safety, or information purposes.

23. Section 223.303 is revised to read as follows:

223.303 Contract clause.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

223.371 thru 223.371-3 [Removed]

24. Sections 223.371 through 223.371-3 are removed.

25. Subpart 223.5 is revised to read as follows:

Subpart 223.5 Drug-Free Workplace

Sec.

223.570 Drug-free work force

223.570-1 Policy

223.570-2 Definitions

223.570-3 Contract clause.

Subpart 223.5—Drug-Free Workplace

223.570 Drug-free work force.

223.570-1 Policy.

The unlawful use by contractor employees of controlled substances threatens national security and the safety of personnel and equipment. Therefore, DOD policy is to ensure that DOD contractors have a program for eliminating the unlawful use of controlled substances by employees whose duties affect health, safety, national security, or accomplishment of the DOD mission.

223.570-2 Definitions.

As used in this section—

Controlled substance and employee are as defined in FAR 23.503. "Employee in a sensitive position" is as defined in the clause at 252.223-7004, Drug-Free Work Force.

223.570-3 Contract clause.

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts that require contractor employees to perform in sensitive positions.

(b) Do not use the clause in solicitations and contracts—

(1) Below the small purchase limitation in FAR Part 13;

(2) For performance or partial performance (but only to the extent of the partial performance) outside the United States, its territories, and its possessions, unless the contracting officer determines inclusion to be in the best interest of the Government; or

(3) For law enforcement agencies when the head of such agency or designee determines that application of the requirements of this section would be detrimental to the law enforcement agency's undercover operations.

PART 225—FOREIGN ACQUISITION

225.102 [Amended]

26. Section 225.102 is amended by revising the introductory sentence in paragraph (b)(ii) to read "Except as provided in FAR 25.102(b)(1), the determination must be approved—".

225.302 [Amended]

27. Section 225.302 is amended by revising under paragraph (b)(i) the entry "Defense Communications Agency" to read "Defense Information Systems Agency."

28. Section 225.703 is revised to read as follows:

225.703 Exceptions.

The Secretary of Defense, or designee, may waive the restriction in 225.702(2) if the Secretary or designee determines it to be in the best interest of the Government. Designees for this waiver authority are—

(1) Army—Assistant Secretary of the Army (Research, Development, and Acquisition).

(2) Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition).

(3) Air Force—Deputy Assistant Secretary of the Air Force (Contracting).

(4) Defense agencies—Director of Defense Procurement.

(a) For other than small purchases, the Secretary of the Department concerned may approve an exception. Before approving an exception for other than small purchases, the Secretary shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs), except—

(i) For emergency purchases; or
(ii) Where supplies are not available from other source and substitute supplies are not acceptable.

225.872-7 [Amended]

29-30. Section 225.872-7 is amended by revising the words "Defense Communications Agency" to read "Defense Information Systems Agency"

225.10 [Removed]

31. Subpart 225.10 is removed in its entirety.

32. Sections 225.7016 through 225.7016-5 are added to read as follows

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.

In accordance with 10 U.S.C. 2507(f), do not purchase air circuit breakers for naval vessels unless—

(a) They are manufactured in the United States; and

(b) The cost of their U.S. components exceeds 50 percent of the cost of all their components.

225.7016-2 Exceptions.

This does not prevent the purchase of spares and repair parts needed to support air circuit breakers manufactured outside the United States.

Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7016-3 Waiver.

Subsequent to the notification at 225.7016-4, the Secretary of the Navy and the Director of the Defense Logistics Agency may waive the restriction on a case-by-case basis if it is determined that applying the restriction in a proposed acquisition—

(a) Is not in the national security interests of the United States;

(b) Will have an adverse effect on a U.S. company; or

(c) Will result in purchase from a U.S. company that, with respect to the sale of air circuit breakers for naval vessels, fails to comply with applicable Government procurement regulations or the anti-trust laws of the United States.

225.7016-4 Waiver notification.

A notice of proposed waiver, with a justification must be received by the Armed Services and Appropriations Committees of the Senate and House at least 30 days before a waiver can be granted.

225.7016-5 Contract clause.

Use the clause at 252.225-7029, Restriction on Acquisition of Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016-2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016-3.

225.7101 [Amended]

33. Section 225.7101 is amended by revising "252.225-7022" to read "252.225-7025".

225.7103 [Amended]

34. Section 225.7103 is amended by adding paragraph (h) to read "(h) For antifriction bearings for contracts awarded after December 31, 1992."

35. Section 225.7303-2 is amended by revising paragraph (a)(2)(iii) and paragraphs (b) and (c) to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(2) * * *

(iii) Offset administrative costs.

(A) A U.S. defense contractor may recover, under an FMS contract, costs incurred to implement specific requirements of its offset agreement with a foreign government or international organization if the foreign

military sale Letter of Offer and Acceptance (LOA) contains a note that—

(1) Specifically addresses offsets;

(2) Advises foreign governments that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor; and

(3) Includes a statement that the U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(B) Offset administrative costs must be reasonable and readily identifiable. Estimated offset administrative costs must be included in foreign military sales pricing information provided to the foreign government as early as possible, but before submittal of the LOA.

(C) Some examples of offset administrative costs—

(1) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(2) Off-shore operations for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(3) Marketing assistance and related technical assistance, transfer of technical information and related training;

(4) Employee travel and subsistence costs; and

(5) Taxes and duties.

(iv) * * *

(b) Costs not allowable under FAR Part 31 are not allowable in pricing foreign military sale contracts, except as noted in paragraph (c) of this subsection.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the ceiling limitations or the formula constraints on independent research and development and bid and proposal (IR&D/B&P) costs in FAR Part 31 do not apply to contracts for foreign military sales. IR&D/B&P costs allowed on contracts for foreign military sales shall be limited to their allocable share of the total expenditures. In pricing contracts for foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

* * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

36. Section 226.7000 is revised to read as follows:

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) provisions of section 1207 of Public Law 99-661, section 806 of Public Law 100-180, section 831 of Public Law 101-189, and section 832 of Public Law 101-510. These laws—

(a) Set a goal for DoD for each of fiscal years 1987-1993 to award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Require a separate goal, for each of fiscal years 1991-1993, as a subset of the five percent goal, for the participation of HBCUs and MIs.

37. Section 226.7002 is revised to read as follows:

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs. In addition, DoD will establish "infrastructure assistance" (e.g., scholarships, faculty development, teaming agreements with defense laboratories, and laboratory renovation) at colleges, universities, and institutions that agree to bear a substantial portion of the costs associated with the programs.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.403-77 [Amended]

38. Section 227.403-77 is amended by revising paragraph (a)(1)(iii)(B) to read "Information in which the Government has unlimited rights; or" and by adding paragraph (a)(1)(iii)(C) to read "Information which is in the public domain;"

227.7004 [Amended]

39. Section 227.7004 is amended by revising paragraph (c)(5) to read "For the Defense Information Systems Agency—the Counsel;" in lieu of "For the Defense Communications Agency—the Counsel;"

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

40. Section 231.205-18 is revised to read as follows:

231.205-18 Independent research and development and bid and proposal costs.

(c)(1)(iii)(1) Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205-18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of—

(i) Such contracts' allocable share of incurred IR&D/B&P costs;

(ii) Such contracts' allocable share of the total IR&D/B&P ceiling; or

(iii) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(2) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to DoD, including activities that—

(i) Strengthen the defense industrial and technology base of the United States;

(ii) Enhance the industrial competitiveness of the United States;

(iii) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(iv) Increase the development of technologies useful for both the private

commercial sector and the public sector; or

(v) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(3) The contracting officer will—
(i) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(ii) Provide the results of the determination to the contractor.

(4) See 225.7303 for additional allowability provisions affecting foreign military sale contracts.

231.7003-1 [Amended]

41. Section 231.7003-1 is amended by revising paragraph (a)(2)(i) to read "A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, (see FAR 42.705-2) which the contractor elected not to appeal and was not withdrawn by DCAA."

PART 232—CONTRACT FINANCING**232.412-70 [Amended]**

42. Section 232.412-70 is amended by adding paragraph (c) to read "Use the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments will be

provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (See subpart 219.71).

43. Section 232.501-1 is amended by revising paragraph (a)(i) to read as follows:

232.501-1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 85 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

* * *

44. Section 232.502-1-71 is amended by revising paragraphs (a)(7) and the table and (b)(5) to read as follows:

232.502-1-71 Customary flexible progress payments.

(a) * * *

(7) Table 32-1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates for other than small or small disadvantaged businesses (see also 232.501-1), minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts or line items that are funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract or over the contract performance period applicable to the contract line item.

TABLE 32-1.—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate (percent)	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH-II.
May 1, 1985 through October 17, 1986	80	15	CASH-III.
October 18, 1986 through September 30, 1988	75	25	CASH-IV.
October 1, 1988 through June 30, 1991	80	20	CASH-V.
After June 30, 1991	85	20	CASH-VI. (see note below).

Note: See paragraph (b)(5)(ii) for implementation instructions.

(b) * * *

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model.

(i) The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH-IV model.

(ii) From time to time the Department of Defense may change the uniform

progress payment rate and/or the minimum contractor investment rate, which may have an effect upon the variables within the DoD Cash Flow Computer Program. In order to avoid frequent revision and redistribution of the computer program, the program is designed to permit use of either a particular model (CASH-II, CASH-V, etc.) or a program option to input the equivalent uniform progress payment rate and minimum contractor investment rate (90%/5%, 80%/20%, etc.), as shown in the table at (a)(7). Either method will result in the same flexible progress payment rate calculation. When the

Cash Flow Computer Program does not contain the model needed for a particular situation, the contracting officer shall use the program option.

* * *

232.502-4 [Amended]

45. Section 232.502-4 is amended by removing paragraph (b).

46. Section 232.502-4-70 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

232.502-4-70 Additional clauses.

(a) * * *

(b) Use the clauses at 252.232-7003, Flexible Progress Payments, and 252.232-7004, DoD Progress Payment Rates, in contracts using a customary flexible progress payment rate.

(c) Use the clause at 252.232-7004, DoD Progress Payment Rates, in addition to the clauses prescribed at FAR 32.502-4.

PART 233—PROTESTS, DISPUTES, AND APPEALS

47. A new subpart 233.1 is added to read as follows:

Subpart 233.1—Protests

Sec.
233.104 Protests to GAO.

Subpart 233.1—Protests

233.104 Protests to GAO.

The GAO revised its protest procedures (4 CFR part 21) effective April 1, 1991. Use the procedures in this section instead of those in FAR 33.104 until the FAR is amended to implement GAO's revised procedures.

(a) *General Procedures.* (1) A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, no later than one work day after the protest is filed with the GAO. The GAO may dismiss the protest if the protestor fails to furnish a complete copy of the protest within one work day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the department/agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The department/agency shall also advise these parties that they may submit their views and relevant information directly to the GAO with a copy to the contracting officer and to other participating interested parties within a specified period of time. Normally, the time specified will be one week.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The department/agency shall submit a complete report to the GAO within 25 work days after the GAO notifies the department/agency by telephone that a protest has been filed, or within ten work days after receipt from the GAO of a determination to use the express option (4 CFR 21.8), unless the GAO—

(A) Advises the department/agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to a department/agency's written request for an extension. Any new date shall be documented in the department/agency's protest file.

(ii) The department/agency report to the GAO shall include a copy of—

(A) The protest;

(B) The offer submitted by the protesting offeror;

(C) The offer which is being considered for award and which is being protested;

(D) All evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions;

(G) Any other documents that the department/agency determines are relevant to the protest;

(H) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;

(I) A list identifying the other parties who are being provided copies of the report; and

(J) A list of the documents withheld from the protestor or other interested parties, and the reasons for withholding them. The list shall identify any documents specifically requested by, and withheld from, the protestor.

(iii) In addition to the documents contained in the report, the department/agency shall make available to the GAO any documents specifically requested by the protestor.

(4)(i) At the same time the department/agency submits its report to the GAO, it shall furnish copies of its report to the protestor and other interested parties who have responded to the notice given under paragraph (a)(2) of this section. A party shall receive all relevant documents, except:

(A) Those that the department/agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the department/agency may decide to exclude from a copy of the report

include documents previously furnished to or prepared by a party; classified information; information that would give a party a competitive advantage;

(B) Protestor's documents which the department/agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If, within two work days after receipt of the department/agency report, the protestor requests additional documents, the department/agency shall provide the requested documents to the GAO within five work days of receipt of the request.

(B) The additional documents shall also be provided to the protestor and other interested parties within the five-work day period unless the department/agency has decided to withhold them for any reason (see paragraph (a)(4)(i)(A) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the protective order. A request for protective order to cover additional documents shall be made in accordance with 233.104(a)(5) within this five-work day period.

(C) The department/agency shall notify the GAO of any documents withheld from the protestor and other interested parties and state the reasons for withholding them.

(5) The GAO may issue a protective order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage (4 CFR 21.3(d)(1)).

(i) *Requests for Protective Orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, but not more than 20 work days after the protest filing date, with copies furnished simultaneously to all parties.

(ii) *Exclusions and Rebuttals.* Within two work days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. Within one work day after receipt of a copy of the request, any rebuttal shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iii) *Additional Documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within one work day after receipt of a copy of the request.

(iv) *Sanctions and Remedies.* The CAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against a department/agency which fails to provide documents designated in a protective order.

(6) The protestor and other interested parties are required to furnish a copy of any comments on the department/agency report directly to the GAO within ten work days after receipt of the report, with copies provided to the contracting officer and to other participating parties.

(7) Departments/agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact, who are knowledgeable about the subject matter of the protest. Each department/agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.* (1) When the department/agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with department/agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the department/agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might

become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding under paragraph (b)(1) of this section.

(c) *Protests after award.* (1) When the department/agency receives notice of a protest from the GAO after award of a contract, but within ten calendar days after award, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

(2) In accordance with department/agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the department/agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the department/agency receives notice of a protest filed with the GAO more than ten calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraph (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and any other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the department/agency, a protestor, or other interested party who has responded to the notice in 233.104(a)(2). The GAO may designate representatives of the

parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing. A recording or transcription of the hearing will normally be made, and copies are available from the GAO for a fee. All parties may file comments on the hearing and report within seven work days of the hearing.

(f) *GAO decision time.* GAO will issue its recommendation on a protest within 90 work days from the date of filing of the protest with the GAO, or within 45 calendar days under the express option (4 CFR 21.8), unless GAO establishes a longer period of time.

(g) *Notice to GAO.* The head of the department/agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation, if the department/agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the department/agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g) of this section) may be paid by the department/agency out of funds available to or for the use of the department/agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the department/agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g) of this section), department/agency personnel should consult the General Counsel's office of the department/agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g) of this section) which have not yet been paid.

48. Section 233.211 is added to read as follows:

233.211 Contracting officer's decision.

(a)(4)(v) Insert the following "Note" in all final decisions immediately after the paragraph required by FAR 33.211(a)(4)(v) (i.e., after "claims of \$50,000 or less"):

"(Note: The U.S. Court of Appeals for the Federal Circuit has issued a decision that you should consider in evaluating your choice of a potential forum for any appeal from this final decision. See *Overall Roofing & Construction, Inc. v. U.S.*, 929 F.2d 687 (Fed. Cir. 1991))."

PART 237—SERVICE CONTRACTING

49. Section 237.102 is added to read as follows:

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on the basis of the number of hours to be provided.

50. Sections 237.170 through 237.170-3 are added to read as follows:

237.170 Uncompensated overtime.

237.170-1 Scope.

This section implements section 834 of Pub. L. 101-510 (10 U.S.C. 2331).

237.170-2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

237.170-3 Solicitation provision.

Use the provision at 252.237-7019, Identification of Uncompensated Overtime, in all solicitations estimated at \$100,000 or more for services to be acquired on the basis of the number of hours to be provided.

PART 239—ACQUISITION OF INFORMATION RESOURCES

239.7401 [Amended]

51. Section 239.7402(a)(3) is amended by revising the words "Defense Communications Agency" to read "Defense Information Systems Agency."

PART 242—CONTRACT ADMINISTRATION

52. Sections 242.1005 through 242.1007 are revised to read as follows:

242.1005 Lead negotiating agency responsibilities.

(a) The DoD IR&D Technical Evaluation Group is responsible for providing contractors the appropriate

guidance for submission of technical information to support IR&D proposals.

(b) The DoD IR&D Technical Evaluation Group will provide the contracting officer with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD.

(c) The determination shall address the 231.205-18(c)(1)(iii)(2) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD.

242.1006 Conducting negotiations.

(a)(5) Ensure that the requirements of 231.205-18(c)(1)(iii)(2) are met.

(b) Contracting officers shall encourage contractors to engage in the IR&D/B&P activities cited in 231.205-18(c)(1)(iii)(2).

§ 242.1007 Content of advance agreements.

(e) The agreement shall specifically note that—

(i) A review was performed of the proposed IR&D/B&P projects for potential interest to DoD; and

(ii) A determination was made that the Government's allocable share of the negotiated ceiling met the requirement for potential interest to DoD at the time of negotiation.

(f)(2) Allowable IR&D/B&P costs are limited to those incurred for projects that are of potential interest to DoD.

53. Section 242.1404-1 is added to read as follows:

242.1404-1 Parcel post eligible shipments.

(b)(1) See DoD 4525.8-M, DoD Official Mail Manual.

PART 243—CONTRACT MODIFICATIONS

243.107-70 [Redesignated as 243.170]

54. Section 243.107-70 is redesignated as 243.170.

55. A new section 243.107-70 is added to read as follows:

243.107-70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7002(c) requires that the contractor notify the contracting officer when a contract modification will have a substantial impact on employment.

PART 245—GOVERNMENT PROPERTY

245.104 [Amended]

56. Section 245.104 is amended by revising the reference "DoD 4275.5-M" to read "DoD 4161.2-M".

245.603-70 [Amended]

57. Section 245.603-70 is amended by revising paragraph (a)(1) to read "Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if the volume of plant clearance warrants performance by the contractor."

PART 249—TERMINATION OF CONTRACTS

249.102 [Amended]

58. Section 249.102 is amended by adding paragraph (a)(5) to read "Include a statement that, if a termination for convenience will have a substantial impact on employment, as defined in the clause at 252.249-7001, Notification of Substantial Impact on Employment, the contractor must provide the required notice to the contracting officer within 30 calendar days."

249.7001 [Amended]

59. Section 249.7001 is amended by revising paragraph (b)(5) to read "Defense Information Systems Agency—Contract Management Division (Code 260)" in lieu of Defense Communications Agency—Contract Management Division (Code 260)".

60. Section 249.7002 is added to read as follows:

249.7002 Notification and reporting of substantial impact on employment.

(a) Section 4201(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, Division D, title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1991), requires the Secretary of Defense to notify the Secretary of Labor if a modification or termination for convenience of a major defense contract or subcontract will have a substantial impact on employment. "Substantial impact on employment" is defined in the clause at 252.249-7001, Notification of Substantial Impact on Employment.

(b) Within ten work days after the contractor provides the notification required under the clause at 252.249-7001, the head of the contracting activity shall notify the Office of Economic Adjustment (OEA), Assistant Secretary of Defense (Force Management and Personnel), in accordance with department/agency procedures.

(1) The notice to OEA shall include the data elements set forth in 252.249-7001(c).

(2) Notices may be mailed or telefaxed to OEA at: Office of Economic

Adjustment, 400 Army-Navy Drive, suite 200, Arlington, VA 22202-2884.
Attention: Division D Notification.
Telefax: (703) 697-3021.

(c) Use the clause at 252.249-7001, Notification of Substantial Impact on Employment, in all contracts of \$5 million or more and all contracts with subcontracts of \$500,000 or more.

PART 250—EXTRAORDINARY CONTACTUAL ACTIONS

250.201-70 [Amended]

61. Section 250.201-70 is amended by revising paragraph (b)(2) to read "Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(A) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804."

250.303 [Amended]

62. Section 250.303 is amended by revising in paragraph (6) the entry "Defense Communications Agency" to read "Defense Information Systems Agency".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211-7005 [Removed and Reserved]

63. Section 252.211-7005 is removed and the section marked "Reserved."

252.211-7019 [Amended]

64. Section 252.211-7019 is amended by adding the date "(MAY 1991)" to the clause heading.

252.223-7000 [Removed and Reserved]

65. Section 252.223-7000 is removed and the section marked "Reserved."

252.223-7004 [Removed]

66. Section 252.223-7004 is removed.

67. Section 252.223-7005 is redesignated as 252.223-7004 and the redesignated section 252.223-7004 is revised to read as follows:

252.223-7004 Drug-Free Work Force.

As prescribed in 252.510-3, use the following clause:

Drug-Free Work Force (Dec 1991)

(a) *Definitions.* As used in this clause—
(1) *Controlled substance, employee, and criminal drug statute* have the meanings given in the Drug-Free Workplace clause of this contract.

(2) *Employee in a sensitive position* means an employee whose duties could reasonably be expected to affect health, safety, or national security, including, but not limited to, duties involving—

- (i) Access to classified information;
- (ii) Possession or use of firearms;

(iii) Design, manufacture, test and evaluation, or maintenance of aircraft, vessels, vehicles, heavy equipment, munitions, toxic materials, weapons, weapons systems, potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences), or major components of the foregoing which are directly contracted for by the Department of Defense;

(iv) Control, operation or use of aircraft, vessels, vehicles, heavy equipment, toxic or nuclear materials, munitions, weapons, weapon systems, or potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences);

(v) Transportation, storage, or protection of toxic or nuclear materials, or munitions, or potentially dangerous materials (such as explosives or unstable chemicals);

(vi) Direct treatment or rehabilitation of employees for unlawful use or abuse of controlled substances; or

(vii) Air traffic control.

(b) The Contractor shall institute and maintain a program for achieving a drug-free work force. As a minimum, the program shall provide for the random drug testing of Contractor employees working in sensitive positions. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988.

(c) The Contractor shall not permit an employee to work in a sensitive position in the performance of a Department of Defense contract if—

- (1) The employee tests positive for the use of a controlled substance during a test pursuant to this clause or a test based on reasonable suspicion of drug use; and
- (2) The use is determined to be unlawful; or
- (3) The employee is convicted of violating a criminal drug statute.

(d) The Contractor may permit an employee covered by paragraph (c) of this clause to work in a sensitive position on a Department of Defense contract only—

- (1) With the approval of the Contracting Officer; and
- (2) After the employee has successfully completed a supervised rehabilitation program.

(e) The requirements of this clause take precedence over any State and local laws to the contrary.

(End of clause)

252.225-7006 [Amended]

68. Section 252.225-7006 is amended by revising paragraph (c)(1)(i) to read "Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and".

252.225-7009 [Amended]

69. Section 252.225-7009 is amended in paragraph (f)(2)(iv) by removing the quotation marks at the end of the second sentence.

70. Section 252.225-7029 is added to read as follows:

252.225-7029 Restriction on acquisition of air circuit breakers.

As prescribed in 252.7016-5, use the following clause:

Restriction on Acquisition of Air Circuit Breakers (Dec 1991)

(a) All air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States and the cost of their U.S. components must exceed 50 percent of the cost of all their components.

(b) If compliance with this restriction will have an adverse effect on a U.S. company, the Offeror/Contractor may request a waiver. (End of clause)

252.228-7001 [Amended]

71. Section 252.228-7001 is amended by revising in paragraph (i)(2)(ii) the word "damage" to read "damaged".

72. Sections 252.232-7004 and 252.232-7005 are added to read as follows:

252.232-7004 DoD Progress payment rates.

As prescribed in 252.502-4-70 (b) and (c), use the following clause:

DOD Progress Payment Rates (Dec 1991)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 85 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of clause)

252.232-7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protégé program.

As prescribed in 252.412-70(c), use the following clause:

Reimbursement of Subcontractor Advance Payments—DOD Pilot Mentor-Protege Program (Dec 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1195, Request for Progress Payments, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1195 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

252.234-7000 [Amended]

73. Section 252.234-7000 is amended by revising the clause title to read "Notice of Cost/Schedule Control Systems (Dec 1991)" in lieu of Cost/Schedule Control Systems (Dec 1991)".

252.237-7019 [Added]

74. Section 252.237-7019 is added to read as follows:

252.237-7019 Identification of uncompensated overtime.

As prescribed in 237.170-3, use the following provision:

Identification of Uncompensated Overtime (Dec 1991)

(a) *Definitions.* As used in this provision—

(1) *Uncompensated overtime* means the hours worked in excess of an average of 40 hours per week by employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave, shall be included in the normal work week for purposes of computing uncompensated overtime hours.

(2) *Uncompensated overtime rate* is the rate which results from multiplying the hourly

rate for a 40 hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at \$20.00 would be converted to an uncompensated overtime rate of \$17.78 per hour. (\$20 × 40) divided by 45 = \$17.78.

(b) For any hours proposed against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in direct cost pools for personnel whose regular hours are normally charged direct.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

252.239-7000 [Amended]

75. Section 252.239-7000 is amended by revising in paragraph (a)(1) the acronym "NACSIM" to read "NACSEM".

76. Section 252.249-7001 is added to read as follows:

252.249-7001 Notification of substantial impact on employment.

As prescribed in 249.7002(c), use the following clause:

Notification of Substantial Impact on Employment (Dec 1991)

(a) *Definitions.* (1) "Major defense contract or subcontract" means—

(i) All prime contracts of \$5 million or more; and

(ii) All subcontracts of \$500,000 or more.

(2) "Substantial impact on employment" means—

(i) A reduction of—

(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area (MSA) or similar area. MSAs are identified in FIPS Publication 8-5, Metropolitan Statistical Areas, which is available from the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161. Tel. (703) 487-4650. Telephone inquiries concerning MSAs may also be directed to the Bureau of the Census, Population Division, Population Distribution Branch, Washington, DC. Tel. (301) 763-5158;

(B) 1,000 or more employee positions, in the case of a labor market area outside an MSA; or

(C) One percent of the total number of civilian jobs in that area; or

(ii) A reduction, or the threat of a reduction, of—

(A) 25 percent or more in sales or production of the contractor or subcontractor; or

(B) 80 percent or more of the workforce of the contractor or subcontractor in any division of such contractor or such subcontractor or at any plant or other facility of such contractor or subcontractor; or

(iii) Any group of 100 or more workers at a defense facility who are, or who are threatened to become, eligible to participate in the Defense Conversion Adjustment Program under section 325 of the Job Training Partnership Act (29 U.S.C. 1662-1662c, as amended).

(b) This clause applies only if a modification or termination for convenience of a major defense contract or subcontract will have a substantial impact on employment.

(c) The Contractor shall notify the Contracting Officer within 30 calendar days if the proposed modification or termination for convenience of this contract or a major defense subcontract under this contract will have a substantial impact on employment. The Contractor may use DD Form 2604, Notification of Substantial Impact. If the form is not used, the notice shall include:

(1) Contract number;

(2) Contractor name and division name;

(3) Type of business (e.g. small disadvantaged business, small business, large business, etc.);

(4) Address of affected work location, including county;

(5) Contract price of items canceled or terminated;

(6) Number of employees affected;

(7) Percentage reduction in sales or production;

(8) Percentage of contractor workforce at affected work location;

(9) Title and signature of the reporting official; and

(10) The information required by (1) through (9) for each subcontract.

(d) The Contractor shall include the substance of this clause in all subcontracts of \$500,000 or more under this contract.

(End of clause)

PART 253—FORMS**253.204-70 [Amended]**

77. Section 253.204-70 is amended by revising in paragraph (d)(5)(i)(H) "Enter Code H" to read "Enter Code N"; and by revising in paragraph (d)(5)(xi)(b)(1) the reference "52.219-7019" to read "52.219-19".

253.204-70 [Amended]

78. Section 253.204-70(c)(3) is amended by revising the heading in the table "Then code Part C block:" to read "Then code the blocks in Part C with reference to the:".

79. Section 253.204-70(c)(4)(vi) is revised to read as follows:

253.204-70 DD Form 350, Individual Contracting Action Report.

* * * * *

(c) * * *

(4) * * *

(vi) **BLOCK C6, NUMBER OF OFFERORS SOLICITED.** Leave Block C6 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If Block B13 is coded	Then
6.....	Enter code 2 in Block C6.
7.....	Leave Block C6 blank.

If not an exception, enter:

(A) *Code 1—One.* Enter code 1 if only one offeror was solicited.

(B) *Code 2—More than one.* Enter code 2 if more than one offeror was solicited.

* * * * *

80. Section 253.204-70(c)(4)(vii) is revised to read as follows:

253.204-70 DD Form 250, Individual Contracting Action Report.

(c) * * *

(4) * * *

(vii) **BLOCK C7, NUMBER OF OFFERS RECEIVED.** Leave Block C7 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If Block B13 is coded	Then
6.....	Enter code 2 in Block C7.

If not an exception, enter:

(A) *Code 1—One.* Enter code 1 if only one offer was received.

(B) *Code 2—More than one.* Enter code 2 if more than one offer was received.

* * * * *

81. Section 253.204-70 is amended by revising paragraph (e)(3)(ii) to read as follows:

253.204-70 DD Form 350, Individual Contracting Action Report.

(e) * * *

(3) * * *

(ii) Enter the offered price from the small business firm that would have been the low offeror if organizations for the blind or other severely handicapped had not participated in the acquisition. Enter the amount in whole dollars.

* * * * *

Appendix G to Chapter 2 [Amended]

82. Appendix G, Table of Contents, part 7, is amended by revising the part 7 entry to read "Defense Information Systems Agency Activity Address Numbers" in lieu of "Defense Communications Agency Activity Address Numbers."

83. Appendix G, part 1, General, section G-101 is amended by revising in paragraph (c) the **DEFENSE COMMUNICATIONS AGENCY entry to read as follows:

****DEFENSE INFORMATION SYSTEMS AGENCY, Chief, Logistics Management Office, Code 202, Defense Information Systems Agency, Washington, DC 20305-2000.**

84. Appendix G is amended by adding a DLA activity address number to the end of part 6 to read as follows:

**DLA920—Defense Electronics Supply Center
W4—DESC-PKCC, 1507 Wilmington Pike, Dayton, OH 45444-5198.**

[FR Doc. 91-30637 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 706, 715, 719, 728, 731, 732, 737, 750, 752, 753, and Appendix H

[AIDAR Notice 92-1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to change office designations to reflect a recent reorganization, to remove the list of countries for which Defense Base Act (DBA) insurance waivers are in effect, and to revise letter of credit coverage to reflect the discontinuation of the Treasury Financial Communication System letters of credit by the U.S. Treasury.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: FA/PPE, Mr. James M. Kelly, room 1600I, SA-14, Agency for International Development, Washington, DC 20523-1435. Telephone: (703) 875-1534.

SUPPLEMENTARY INFORMATION: AID has recently undergone a reorganization; the

AIDAR is being amended to reflect new office designations and titles. The AIDAR is also being amended to remove the list of countries for which DBA insurance waivers are in effect. Because of the list's size and the irregular timing of changes, AID has decided to maintain and update it through an internal directive to agency contracting officers. The AIDAR as revised will tell interested persons what the DBA list is and how to find out if a country is on the list. Finally, the AIDAR is being amended to revise our rules regarding establishment of letters of credit. This is in response to the Treasury Department's decision to discontinue letters of credit under the Treasury Financial Communication System, and its suggestion that each agency establish its own letter of credit system. The revised system is substantially similar to the superseded system, and we do not believe it will have significant impact on AID contractors.

The changes being made by this notice are editorial and administrative and are not considered significant rules under FAR section 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this notice, use of the proposed rule/public comment approach was not considered necessary. AID has decided to issue this notice as a final rule; however, we welcome public comment on the material covered by this notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the "FOR FURTHER INFORMATION CONTACT" section of the preamble.

List of Subjects in 48 CFR Parts 701, 702, 706, 715, 719, 728, 731, 732, 737, 750, 752, 753 and Appendix H to Chapter 7

Government procurement.

Accordingly for the reasons set out in the preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 701, 702, 706, 715, 719, 728, 731, 737, 750, 752, 753 and appendix H to Chapter 7 continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM**Subpart 701.1—Purpose, Authority, Issuance****701.105 [Amended]**

2. Paragraph (b) of section 701.105, OMB approval under the Paperwork Reduction Act, is amended by removing "Office of Procurement Policy, Planning and Evaluation, MS/PPE" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 701.3—Agency for International Development Acquisition Regulation**701.372 [Amended]**

3. Paragraph (b) of section 701.372, Applicability, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

701.376-4 [Amended]

4. Section 701.376-4, Implementation by AID contracting activities, is amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 701.4—Deviations to the FAR or AIDAR**701.470 [Amended]**

5. Paragraph (a)(2) of section 701.470, Procedure, is amended by removing "Planning, Policy and Evaluation Staff, MS/PPE" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 701.6—Contracting Authority and Responsibility**701.601 [Amended]**

6. Paragraph (b)(3) of section 701.601, General, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

PART 702—DEFINITIONS OF WORDS AND TERMS**Subpart 702.170—Definitions****702.170-3 [Amended]**

7. Paragraph (a) of section 702.170-3, Contracting activities, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

702.170-10 [Amended]

8. Paragraph (a)(1)(ii) of section 702.170-10, Head of the contracting activity, is amended by removing

"Office of Management Operations" and replacing it with "Office of Administrative Services".

702.170-13 [Amended]

9. Section 702.170-13, Procurement Executive, is amended as follows:

a. In paragraphs (a)(1) and (a)(2), remove "Assistant to the Administrator for Management" and replace it with "Associate Administrator for Finance and Administration".

b. In paragraph (b), remove "Deputy Assistant to the Administrator for Management" and replace it with "Deputy Associate Administrator for Finance and Administration".

PART 706—COMPETITION REQUIREMENTS**Subpart 706.5—Competition Advocates****706.501 [Amended]**

10. Section 706.501, Requirement, is amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

PART 715—CONTRACTING BY NEGOTIATION**Subpart 715.5—Unsolicited Proposals****715.504 [Amended]**

11. Paragraph (a) of section 715.504, Advance guidance, is amended by removing "S&T/RUR, Room 309" and replacing it with "R&D/RES, Room 320".

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**Subpart 719.2—Policies****719.270 [Amended]**

12. Paragraph (k) of section 719.270, Small business policies, is amended by removing "Office of Management Operations" in both places where it appears and replacing it with "Office of Administrative Services".

PART 728—BONDS AND INSURANCE**Subpart 728.1—Bonds****728.105-1 [Amended]**

13. Paragraph (b) of section 728.105-1, Advance payment bonds, is amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 728.3—Insurance

14. Section 728.305-70 is amended by revising paragraph (a) as follows

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and AID insurance coverage.

(a) Upon the recommendation of the AID Administrator, the Secretary of Labor may waive the applicability of the Defense Base Act (DBA) with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or AID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver. Application for a waiver is submitted on Labor Department Form BEC 565. AID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other worker's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing worker's compensation coverage of the country where work will be performed or of the country of the employee's nationality, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to AID-financed contracts performed in certain countries, subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided DBA insurance coverage;

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits. Information as to whether a DBA Waiver has been obtained by AID for a particular country may be obtained from the cognizant AID contracting officer.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES**Subpart 731.7—Contracts With Nonprofit Organizations****731.770 [Amended]**

15. Paragraph (a) of section 731.770, OMB Circular A-122: cost principles for nonprofit organizations; AID implementation, is amended by removing "OSC" and replacing it with "OCC".

16. Part 732 is revised as follows:

PART 732—CONTRACT FINANCING**Subpart 732.4—Advance Payments**

732.401 Statutory authority.

732.402 General.

732.403 Applicability.

732.406-70 Agency-issued letters of credit.

732.406-71 Circumstances for use of an LOC.

732.406-72 Establishing an LOC.

732.406-73 LOC contract clause.

732.406-74 Revocation of the LOC.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 732.4—Advance Payments**732.401 Statutory authority.**

(a) Sections 635 (b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1955, 30 FR 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Federal Property and Administrative Services Act of 1949, which provides authority, not otherwise available to AID, to take a paramount lien.

(b) The Act of August 28, 1968, Public Law 85-804 does not apply to AID.

732.402 General.

(a)-(d) [Reserved]

(e) All U.S. Dollar advances to profit making organizations require the approval of the Procurement Executive; all such approvals are subject to prior consultation with the AID/W Controller.

732.403 Applicability.

References to nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work include nonprofit contracts with nonprofit institutions for: (a) technical assistance services provided to or for another country or countries, and (b) projects which concern studies, demonstrations and similar activities related to economic growth or the solution of social problems of developing countries.

732.406-70 Agency-issued letters of credit.

This subsection provides guidance on use of AID issued letters of credit (LOC) for advance payments.

732.406-71 Circumstances for use of an LOC.

An LOC shall be used under the following circumstances:

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart, the guidance provided in FAR 32.4, and Chapter 15E of AID Handbook 1, Supplement B;

(b) A.I.D. has, or expects to have, a continuing relationship of at least one year with the recipient organization, and the annual amount required for advance financing will be at least \$50,000; and

(c) The Office of Financial Management, Cash Management and Payment Division (FM/CMP) agrees that the LOC payment method is appropriate.

732.406-72 Establishing an LOC.

(a) While the contract will provide for the use of an LOC when it is justified under subsection 732.406-71, the LOC is a separate agreement between the contractor and FM/CMP, acting on behalf of the AID Controller. The terms and conditions of the LOC are established by FM/CMP/LC.

(b) In order to establish or amend an LOC, the contracting officer shall provide FM/CMP with the following information:

- (1) The name of the Contractor;
- (2) The official 16 digit AID contract number;
- (3) The obligated amount of the contract;
- (4) The budget plan code for the obligated funds;
- (5) The effective date and estimated completion date.

This information should be provided in writing to FM/CMP together with a request to establish or amend an LOC as early in the negotiation cycle as possible.

(c) FM/CMP will prepare the LOC in accordance with AID's LOC procedures; issue or amend and maintain the LOC in accordance with its terms and AID procedures and regulations; and provide the contracting officer(s) a copy of each LOC and any other material governing its use at the time the LOC is issued or when it is amended or modified.

732.406-73 LOC contract clause.

If payment is to be provided by LOC, the contract shall contain the clause in subsection 752.232-70.

732.406-74 Revocation of the LOC.

If during the term of the contract FM/CMP believes that the LOC should be revoked, FM/CMP may, after consultation with the cognizant contracting officer(s) and GC, revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

PART 737—SERVICE CONTRACTING**Subpart 737.2—Advisory and Assistance Services****737.206 [Amended]**

17. Paragraph (c)(2)(ii) of section 737.206, Requesting activity responsibilities, is amended by removing "Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI" and replacing it with "Directorate for Policy, Center for Development Information and Evaluation, Office of Development Information—POL/CDIE/DI".

737.270 [Amended]

18. Paragraph (a) of section 737.270, AID advisory and assistance executive, is amended by removing "Assistant to the Administrator for Management Services" and replacing it with "Associate Administrator for Finance and Administration".

PART 750—EXTRAORDINARY CONTRACTUAL RELIEF**Subpart 750.71—Extraordinary Contractual Actions to Protect Foreign Policy Interests of the United States**

750.7109-1, 750.7110-1, 750.7110-2, 750.7110-3 [Amended]

19. Sections 750.7109-1, Filing requests; 750.7110-1, Investigation; 750.7110-2, Intra-agency coordination; and 750.7110-3, Submission of cases to the approving authority; are amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**Subpart 752.2—Texts of Provisions and Clauses****752.228-3 [Amended]**

20. Section 752.228-3 is amended by revising paragraph (b) as follows:

752.228-3 Worker's compensation insurance (Defense Base Act).

(b) If AID or the contractor has secured a waiver of DBA coverage (see AIDAR 728.305-70(a)) for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

752.232-70 [Amended]

21. Paragraphs (a), (b) and (d) of the contract clause in section 752.232-70, Letter of Credit Advance Payment, are amended by removing "(PFM/FM/CMP)" and replacing it with "(FM/CMP)".

Subpart 752.70—Texts of AID Contract Clauses**752.7004 [Amended]**

22. Paragraph (b)(4) of the contract clause in section 752.7004, Source and Nationality Requirements, is amended by removing "AID Transportation Support Division, Office of Commodity Management" and replacing it with "Transportation Division, Office of Procurement (OP/TRANS)".

752.7026 [Amended]

23. Paragraph (b)(3) of the contract clause in section 752.7026, Reports, is amended by removing "Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division" and replacing it with "Directorate for Policy, Center for Development Information and Evaluation, Office of Development Information"; and by removing "PPC/CDIE/DI" and replacing it with "POL/CDIE/DI".

PART 753—FORMS**Subpart 753.1—General****753.107 [Amended]**

24. Section 753.107, Obtaining Forms, is amended by removing "SER/MO/CPM/M" and replacing it with "FA/AS/PP/PP".

Appendices to Chapter 7**Appendix H—Response to Audit Recommendations****Appendix H [Amended]**

25. Appendix H is amended as follows:

(a) In paragraph 2, remove "MS/OP" and replace it with "the Office of Procurement (FA/OP, hereinafter referred to as OP)";

(b) In paragraphs 5(b), 5(b)(1)(b), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c), 5(b)(4)(a), 6 and 7, remove all references to "MS/OP" replacing them with "OP"; and in 5(b)(1)(c) remove the reference to "SER/OP" and replace it with "OP".

(c) In paragraph 7, remove "DAA/MS" and replace it with "DAA/FA".

Dated: November 25, 1991.

John F. Owens,

Procurement Executive.

[FR Doc. 91-30933 Filed 12-27-91; 8:45 am]

BILLING CODE 5116-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 216 and 247**

[Docket No. 910777-1177]

Taking and Importing of Marine Mammals; "Dolphin Safe" Tuna Labeling

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; extension of comment period.

SUMMARY: To implement title IX of the Fishery Conservation Amendments of 1990, called the Dolphin Protection Consumer Information Act (DPCIA), NMFS published an interim final rule on September 19, 1991, and invited comments from the general public and affected parties. The original effective date, with the exception of collection-of-information requirements, was September 19, 1991, and comments were due no later than January 1, 1992. NMFS had originally intended to provide an extended comment period for users to familiarize themselves with the requirements and procedures of the rule, and to discover any shortcomings. Sections 216.24(e)(3) and 247.4 contained collection-of-information requirements subject to the Paperwork Reduction Act and were not effective until approved by the Office of Management and Budget (OMB). Delays in OMB approval and publication of the notice, as well as requests by the importers to delay the compliance date, resulted in changing the effective date of the collection-of-information requirements until December 1, 1991, except for provisions of § 216.24(e)(3) applicable to canned tuna products entered into a bonded warehouse prior to December 1, 1991, which were not applicable until January

8, 1992. This considerably shortened the comment period on those measures.

To allow sufficient time to assess the operability of the new requirements and to receive comments from the parties involved, many of whom are exporters from nations designated as "large-scale driftnet nations" (Korea, Japan, Taiwan, and France), NMFS extends the comment period on the interim rule for an additional 121 days (See DATES).

DATES: Comments on the interim final rule must be received on or before May 1, 1992.

ADDRESSES: Comments should be mailed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT:

E.C. Fullerton (Director, Southwest Region, NMFS) telephone (213) 514-6196.

SUPPLEMENTARY INFORMATION: The provisions of the interim final rule (IFR) implementing the DPCIA published on September 19, 1991, (56 FR 47418) were not subject to routine notice-and-comment requirements of the Administrative Procedure Act because the rule involved a foreign affairs function of the United States. NMFS made a considerable effort to obtain and consider the views of interested parties in the process of drafting the IFR. Meetings were held with other Federal agencies, major U.S. tuna canners, interested environmental groups, and the Marine Mammal Commission to discuss NMFS strategy for implementation of the DPCIA and to familiarize NMFS with other Federal regulations governing the importation, processing and labeling of seafood. Since advance notice and opportunity for public comment was not given prior to establishing the IFR, NMFS believed there was justification in providing an extended comment period while the interim rule was in effect, and intended to provide 6 months for interested parties to fully evaluate and comment on the rule, its implementation, and its effects.

Portions of the rule (§§ 216.24(e)(3) and 247.4) contained collection-of-information requirements subject to the Paperwork Reduction Act and were not effective until approved by OMB. Upon OMB's approval, NMFS published a notice of effectiveness and enforcement of a collection-of-information requirement on October 4, 1991 (56 FR 50278). The delays in approval and publication of the notice allowed less than 30 days notice to importers and brokers to assure that their shipments were accompanied by the required

certification. Many of them requested an extension of the compliance date. On November 6, 1991, (56 FR 56603) NMFS published a notice changing the effective date to December 1, 1991, except for canned tuna product entered into a bonded warehouse prior to December 1, 1991, which will be subject to the new regulations beginning January 8, 1992.

Changing the effective date considerably shortened the evaluation

period for comment. NMFS wants to give participants sufficient time to become acquainted with the requirements and procedures of the rule, to establish mechanisms to comply with the regulatory requirements, and to evaluate their operability and effectiveness. The comment period is therefore extended an additional 121 days to ensure adequate time for all interested parties, particularly affected

nations, and those organizations and individuals not in the United States to respond to the rulemaking.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: December 23, 1991.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 91-31029 Filed 12-27-91 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 250

Monday, December 30, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 00135]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation proposes to revise and reissue 7 CFR part 400, subpart J, General Administrative Regulations; Appeal Procedure, to: (1) Reflect the establishment of an Appeals and Litigation Staff, an organization within the Office of the Manager, FCIC; (2) set forth the authority of the Appeals and Litigation Staff; and, (3) to prescribe administrative procedures for a complete and independent review of determinations.

COMMENT DATE: January 29, 1992.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in:

(a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Corporation has established an Appeals and Litigation Staff, an organization within the Office of the Manager, which is independent from agency officials making program decisions. These proposed revised and reissued regulations of subpart J set forth the authority of the Appeals and Litigation Staff and prescribe the manner and format of procedures under which any person or organization may appeal from a determination by the Corporation.

List of Subjects in 7 CFR Part 400

General administrative regulations; Appeal procedure, Administrative practice and procedure.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to revise and reissue 7 CFR

part 400, subpart J, General Administrative Regulations; Appeal Procedure; Administrative Practice and Procedure, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart J—Appeal Procedure—Regulations

- Sec.
- 400.80 General.
 - 400.81 Definitions.
 - 400.82 Appealable and nonappealable determinations.
 - 400.83 Appeal requests.
 - 400.84 Hearing rules.
 - 400.85 Authority of the Hearing Officer.
 - 400.86 Review requests.
 - 400.87 Review rules.
 - 400.88 Authority of Review Officer.
 - 400.89 Effect of decision.
 - 400.90 Records.
 - 400.91 OMB Control numbers.
 - 400.92 Basis of determination.
 - 400.93 Reservation of authority.

Authority: 7 U.S.C. 1501 *et seq.*

Subpart J—Appeal Procedure—Regulations

§ 400.80. General.

(a) The Appeals and Litigation Staff is an organization within the Office of the Manager which is independent from agency officials having the responsibility for making program determinations. The Director, Appeals and Litigation Staff, reports directly to the Manager of the Corporation. This subpart contains rules and regulations issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), to be used by the Appeals and Litigation Staff to ensure that full, complete, and independent review is afforded to affected members of the public when certain adverse determinations have been made. It sets out the authority and procedures of the Appeals and Litigation Staff, which hears and reviews administrative appeals.

(b) The provisions of this subpart apply to determinations concerning insured and, to the extent applicable, reinsured crop insurance policies.

(c) The provisions of this subpart do not apply to determinations by the Corporation other than those specified in paragraph (b) of this section. Examples of determinations not covered by this subpart include Freedom of Information Act determinations to

release or deny the release of information sought by members of the public (appealable under 7 CFR part 1), determinations to purchase or not to purchase goods and services from members of the public under the Federal contracting laws and regulations (appealable to the Department's Board of Contract Appeals under 7 CFR part 24), and suspension and debarment procedures.

(d) The provisions of this subpart do not apply to determinations by organizations outside the Corporation even when they are used as a basis for determinations falling within paragraph (b) of this section. Examples of determinations not covered by this subpart are determinations of the Soil Conservation Service or Agricultural Stabilization and Conservation Service which may determine whether an applicant qualifies for insurance.

(e) The provisions of the Administrative Procedures Act, 5 U.S.C. 551 through 559, as amended, are not applicable to proceedings under this subpart. The Equal Access to Justice Act, 5 U.S.C. 504, as amended, does not apply to these proceedings.

(f) Termination of crop insurance for debt and debt collection activities will be held in abeyance once an appeal has been filed until such time as a final decision on the appeal has been made under this Subpart. If the appeal is decided in the favor of the insured, insurance will remain in effect. If the decision on appeal is adverse to the insured, the Corporation, in its discretion, may terminate the policy retroactive to the debt termination date initially applicable or may elect to continue the policy in full force and effect through the crop year then in effect in accordance with its terms.

(g) Except as noted in subsection (f) above, filing an appeal or a request for review will not stay the effect of any adverse administrative action. Such action will be effective as and when issued. If, however, an appeal from an adverse administrative action is decided in favor of the appellant, the decision of the hearing officer or review officer will have retroactive effect to the date of the administrative action being appealed from. If an appeal from an adverse administrative action is decided adverse to the appellant, the appellant will be given 30 calendar days to satisfy any requirements of the adverse administrative action or to avail the appellant of any other option available under the contract as of the date of the administrative action.

(h) The regulations are applicable to any request for an appeal or a review filed after the effective date of this part.

The procedures contained herein also apply to requests filed prior to the effective date hereof to the extent that they do not adversely affect any party in those proceedings.

§ 400.81 Definitions.

Unless the context indicates otherwise, words importing the singular include the plural, and words used in the present tense include the future.

For the purpose of these regulations:

(a) *Appeal Case File*—means the Corporation file and any other papers or calculations submitted by the decisionmaker; all papers, calculations and evidence submitted by the appellant; any recording or written transcript of the hearing; the appeal decision and appeal hearing report; the review decision and review report, if any; and relevant sections of Field Office files or audit investigation reports. The appeal case file is available in its entirety to the appellant.

(b) *Appellant*—means (1) any person who, as a crop insurance policy holder or applicant for crop insurance, is directly and adversely affected by a determination made by the Corporation; or (2) any insurance company which is directly and adversely affected by a determination made by the Corporation to the extent that such determinations are appealable under the provisions of this Subpart. The term "appellant" includes the appellant's authorized representative.

(c) *Authorized Representative*—means a person designated in writing by an appellant to act for and on behalf of the appellant. Representatives will be presumed to retain their authority to act for an appellant until the written authorization is revoked in writing. An insurance agent may not appear as an authorized representative of the appellant if the appellant is an insured. In the case of an appeal by the holder of a crop insurance policy issued by a reinsured company, no representative of the reinsured company may appear as the authorized representative of the appellant.

(d) *Contract*—means a written crop insurance policy entered into by a person with the Corporation.

(e) *Corporation*—means the Federal Crop Insurance Corporation and any authorized officer or employee thereof, as applicable.

(f) *Decision*—means the determination of the hearing officer or review officer. The basis of the decision shall not be limited to the issues raised by the appellant, but may be based on all information available to the hearing officer or the review officer from whatever source. All information forming

the basis of the decision will be available to the appellant in the appeal case file.

(g) *Hearing*—means an informal administrative proceeding granted an appellant at which issues of fact are presented to a hearing officer by an appellant and other persons.

(h) *Hearing Officer*—means an individual designated or appointed by the Corporation to conduct an administrative appeal hearing who has the authority to uphold, reverse, or modify determinations of the Corporation.

(i) *Reinsured Company*—means a company which is a party to a Standard Reinsurance Agreement with the Corporation.

(j) *Person*—means an individual, partnership, association, corporation, estate, trust, or other legal entity, and, whenever applicable, a State or a political subdivision or agency of a State.

(k) *Review*—means the review of the hearing officer's decision and all available information relevant to an appellant's case by a review officer.

(l) *Review Officer*—means an individual designated or appointed by the Corporation to conduct an appeal review who has the authority to uphold, reverse, or modify determinations of the Corporation and decisions of hearing officers.

§ 400.82 Appealable and nonappealable determinations.

(a) Final determinations of the Federal Crop Insurance Corporation that directly and adversely affect any person are appealable by that person or their successors in interest to the Appeals and Litigation Staff under the provisions of this subpart. All matters concerning the application of law and regulations to the issue may be considered. The Appeals and Litigation Staff does not have the authority to compromise claims or to change, waive, or modify applicable laws, regulations, or contracts.

(1) Determinations based on clear and objective statutory or regulatory requirements are not appealable. Examples include:

(i) Denial of insurance to an entity not identified as an eligible insured by the regulations;

(ii) Denial of insurance because an application was received by the agent after the sales closing date or any extension issued by the Corporation;

(iii) Requirements and conditions developed by agencies other than the Corporation (They include, but are not

limited to "Sodbuster/Swampbuster" restrictions);

(iv) Denial of insurance because of a conviction under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance;

(v) Mathematical computations by the Corporation which are correctly calculated in accordance with written Corporation policy;

(vi) Penalties and interest rates as set forth in Corporation procedure, except the application of an incorrect penalty or interest rate; and

(vii) Debt collection and credit reporting initiatives included in the Federal Claims Collection Standards.

(2) Administrative procedures published through the Corporation's Issuance System are not appealable.

(3) Any matter previously decided by a court or administrative agency of competent jurisdiction is not appealable.

(4) In cases where denial of insurance is based upon both appealable and nonappealable actions, the denial of insurance is not appealable.

(b) Determinations by a reinsured company affecting those insured by such company are not appealable.

(c) Underpaid indemnities or overstated premiums within the Corporation's tolerance limit are not appealable.

(d) Determinations of the Corporation affecting those insured by a reinsured company related to rate and coverage issues are appealable, except that rate and coverage determinations of the Corporation that affect entire classes of insureds are not appealable.

(e) Denial of requests for relief under the Good Faith Reliance on Misrepresentation provisions contained in this chapter are appealable.

§ 400.83 Appeal requests.

(a) A request for an appeal must be in writing and must be physically received by the Corporation within 45 days of the date of written notice of the determination being appealed. The request for appeal must be sent to Chief, FCIC Appeals and Review Branch, U.S. Department of Agriculture, Washington, DC 20250.

(b) Whenever the final date for filing a request for an appeal prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal working hours, the time for filing shall be extended to the next working day.

(c) A request for an appeal may be accepted and acted upon even though it is not filed within the time prescribed in

paragraph (a) or (b) of this section if, in the judgment of the Director, Appeals and Litigation Staff, the circumstances warrant such action.

(d) The request for the appeal must:

(1) Be signed by the Appellant;

(2) Contain a statement of the matter on which the appeal is sought;

(3) Contain a statement of the appellant's reasons for believing that the determination being appealed is incorrect;

(4) Contain a statement which clearly sets out the relief requested; and

(5) Provide a telephone number at which the appellant or his/her representative can be reached.

(e) When an appeal is filed, it will be handled as follows:

(1) The appeal case file will be made available to the appellant at the service office within 10 working days following receipt of a written request to inspect the file. A written request from the appellant will be required. Copies will be provided at a charge of \$0.10 per page. This charge may be waived by the Corporation upon request and will be waived for requests of fewer than 30 pages.

(2) If the appeal is requested by a party to a crop insurance contract with a reinsured company, the reinsured company will be notified of the appeal request and will be offered an opportunity to participate in the hearing.

(3) The hearing officer may, upon review of the file, find that the determination must be reversed. In that event, he or she will notify all parties of this decision and of actions to be taken. Otherwise, the hearing officer will arrange for a hearing to be held. The hearing officer will notify the appellant by Certified Mail, return receipt requested, of the date, time, and place of the hearing. Such notice will be given at least 30 days prior to the date of the hearing. A hearing may be scheduled within 30 days provided that the appellant waives, in writing, the right to a 30-day notice, and further provided that no interested party is adversely affected thereby.

(4) The hearing will be held at a date, time, and location determined by the hearing officer, taking into consideration the desires of the appellant. If necessary, after being notified of the scheduled hearing date, the appellant may request that the hearing be rescheduled. Such rescheduling must be to a date within 10 working days of the original hearing date, except for circumstances beyond the control of the appellant or other good reasons as determined by the Director, Appeals and Litigation Staff.

(5) The appellant need not be physically present at the hearing. If the appellant chooses not to attend the hearing, the hearing officer will arrange a telephone conference call to include all necessary parties.

(6) When the appellant, without reasonable cause, fails to appear at the hearing when such hearing has been requested by the appellant, in person or by telephone, the appellant's appeal will be considered concluded. If the hearing officer, with the concurrence of the Director, Appeals and Litigation Staff, determines that the appellant's failure to appear was for reasons beyond the control of the appellant or for other good reason, the hearing officer may reschedule the hearing at a later date and time, but generally not later than 10 working days following the initially scheduled date.

(7) At any time before the scheduled hearing, the appellant may waive the opportunity for a hearing and, instead, request that the hearing officer make a decision based on the record, any written statements or evidence the appellant may submit and any other information the hearing officer deems necessary.

(8) The hearing will be based on the material in the hearing record, procedures, statutes, and regulations of the Corporation and on the reasons set out in the determination being appealed. The basis given for the determination being appealed will form the core of the hearing. However, nothing herein prevents the hearing officer from predicated its decision on an independent basis providing the appellant has the opportunity to address that independent basis. If any changes in circumstances or other occurrences material to the determination arises after the appeal has been requested, the hearing officer and the appellant must be advised immediately. The hearing officer may, in such event, delay the hearing, return the file for reconsideration, or take such other action as is appropriate.

(9) If other legal or administrative action, based on the facts reasonably assumed to be pertinent to the appeal, is initiated, pending, or in progress at the time an appeal is requested or at any time before an appeal hearing is concluded, the hearing officer may suspend or take any other reasonable action with regard to the appeal. Such legal or administrative action may include, but not be limited to, criminal investigation or indictment, bankruptcy, or civil action in which the appellant is either plaintiff or defendant.

§ 400.84 Hearing rules.

(a) The hearing will be an informal proceeding at which the appellant has the responsibility of showing why the determination should be modified or reversed. The appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses, and arguments in support of the appellant's appeal, and may controvert evidence relied on by the Corporation. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings. The hearing officer has no authority to subpoena witnesses or documents, or to compel testimony. Neither does the hearing officer have the authority to administer oaths. However, all testimony and evidence submitted is subject to the provisions of 18 U.S.C. 1001 and 1014 and other Federal statutes.

(b) During and after the hearing, the hearing officer may request any further information he/she considers necessary to reach a proper decision. Such information must be provided to the hearing officer within ten (10) working days of the hearing unless an extension is granted for good cause shown. Failure of the appellant to provide information within the appellant's ability to provide may result in an unfavorable decision.

(c) The appellant may submit additional materials for the hearing officer's consideration if the hearing officer has been notified of the appellant's intention to submit that information. Such material must be provided to the hearing officer within the time period set by the hearing officer.

(d) Recording the hearing:

(1) The hearing officer will make a record of the hearing, either by written, audio, video, or stenographic means or any combination of these.

(2) Appellants may, with 10 days advance notice to the hearing officer, record the proceedings at their own expense within the rules and procedures established by the hearing officer.

(3) At the time the decision is rendered and upon request, the record of the hearing will be made available to the appellant. One (1) copy of any audio or video recording of the hearing, will be made available to the appellant upon request, free of charge. A reasonable charge may be made for additional copies requested by the appellant.

(4) Upon request, a transcript of the hearing will be provided, within a reasonable time period, for a fee approximately equal to the

government's costs of having the transcript prepared.

(5) The appellant may make its own arrangements, independent of the Corporation, for a stenographic transcript of the hearing. The hearing officer must be given notice within a reasonable period of time if the appellant wishes to arrange for a stenographic transcript so that accommodations may be arranged. Unless the Corporation is provided with a copy of appellant's transcript, it will not be part of the administrative record.

(6) Any recording of a hearing or transcript thereof made by the Corporation, or at the Corporation's expense, will be included as part of the appeal case file.

(e) For good cause, the hearing officer may, at the request of either the appellant or a Corporation official or in the hearing officer's judgment, continue the hearing to a later time. The length of the continuance will be in the hearing officer's discretion.

(f) The decision of the hearing officer shall be based on all information available to the hearing officer from whatever source. This may include, but is not limited to facts presented at the hearing or in writing, additional information requested by the hearing officer or submitted voluntarily by the appellant, appropriate Corporation files, applicable statutes and regulations, and the relevant crop insurance policy. Except for published statutes and regulations, all information forming a base for the hearing officer's determination will be included in the appeal file.

(g) If an appellant waives the opportunity for a hearing and the hearing officer examines any information which has not previously been available for examination by the appellant, the appellant will be advised by the hearing officer of the additional information and be allowed an opportunity to examine it and respond accordingly. Usually, the total time given the appellant to examine and respond to this additional information will not exceed 20 working days.

(h) The hearing officer generally will render a decision within 30 calendar days of the date of the hearing, unless this would not allow sufficient time to consider any additional information requested by the hearing officer or submitted voluntarily by the appellant. Failure of the hearing officer to meet this goal will not divest the hearing officer of jurisdiction.

(i) Notwithstanding any provision of this section, the hearing officer may delay any hearing or issuance of a decision pending receipt of additional

evidence; issuance of a report by the Office of Inspector General, the Corporation Compliance Division or other investigative agency; at the request of the Office of Inspector General or other lawful authority; or at the request of the United States Attorney's Office pending legal action, either civil or criminal; or for other good cause as determined by the Director, Appeals and Litigation Staff.

(j) the hearing officer will inform the appellant, Corporation officials, and any other person servicing the account, in writing, of the decision, the reason for it, and the action to be taken.

(k) the decision of the hearing officer will be mailed to the appellant by Certified Mail, return receipt requested.

(1) The decision letter will be accompanied by an appeal hearing report which states the facts pertaining to the appeal including, but not limited to: the date and time of the hearing and the identities of all those present in person or by telephone; the background of the appeal issues; a summary of the pertinent evidence, both oral and written; citations of the applicable provision of law, regulation, crop insurance policy or endorsement, or other Corporation directive on which the hearing officer based his/her decision; and the hearing officer's findings. Where a hearing was waived by the appellant, a similar report will be prepared and accompany the decision letter, omitting any irrelevant sections.

(m) If the decision does not grant the full relief the appellant was seeking, the decision letter must contain the following statement: "You may request, in writing, a review of this decision within 45 days of the date of this letter. A request for review should be sent to Chief, FCIC Appeals and Review Branch, U.S. Department of Agriculture, Washington, DC 20250."

(n) If the applicant does not request in writing a review of the hearing officer's decision within the 45 day period provided in paragraph (m), the appeal will be concluded and the decision final.

§ 400.85 Authority of hearing officer.

(a) Under authority delegated by the Director, Appeals and Litigation Staff, the hearing officer has the authority to:

- (1) Establish the time and place of the hearing;
- (2) Adjourn the hearing from time to time and change the time and place of the hearing;
- (3) Rule on motions and requests;
- (4) Receive evidence;
- (5) Admit or exclude evidence;
- (6) Request evidence or additional information;

(7) Hear oral arguments on facts or law;
 (8) Do all acts and take all measures necessary for the maintenance of order at the hearing for the efficient conduct of the proceeding;

(9) Make a written determination based upon the record including the testimony submitted;

(10) Overturn or modify the determination appealed from in whole or in part; and

(11) Commit the Corporation to a course of action, without regard to the amount of money at issue.

(b) The hearing officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation.

§ 400.86 Review requests.

(a) A request for a review of an appeal decision must be in writing and must be physically received within 45 days of the date of the written notice of the appeal decision of which review is sought. A request for review must be sent to Chief, FCIC Appeals and Review Branch, U.S. Department of Agriculture, Washington, DC 20250.

(b) Whenever the final date for filing a request for review prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal hours, the time for filing shall be extended to the next working day.

(c) A request for review may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the Director, Appeals and Litigation Staff, the circumstances warrant such action.

(d) The request for the review must:

(1) Be signed by the Appellant;

(2) Contain a statement of the matter on which the review is sought;

(3) Contain a statement of the Appellant's reasons for believing that the hearing officer's decision is incorrect; and

(4) Contain a statement which clearly sets out the relief requested.

(e) When an Appellant requests a review of a decision, the review will be handled as follows:

(1) The appeal case file will be made available to the appellant or his/her authorized representative at the service office within 10 working days following receipt of a written request to inspect the file. A written request from the appellant will be required. Copies will be provided at a charge of \$0.10 per copy. This charge may be waived by the Corporation upon request and will be

waived for requests of fewer than 30 pages.

(2) If the review is requested by a party to a crop insurance contract with a reinsured company, the review officer will notify the reinsured company of the review request and such company will be offered an opportunity to submit evidence for consideration by the review officer.

(3) The review decision will be based on the appeal case file, arguments of the appellant in the appellant's request for review and on the reasons for the decision set out in the decision letter and appeal hearing report. However, the review officer may consider additional evidence submitted by any interested party upon notification and opportunity for review by the appellant.

(4) If other legal or administrative action, based on the facts reasonably assumed to be pertinent to the review, is initiated, pending, or in progress at the time a review is requested or at any time before a review decision is issued, the review officer may suspend or take any other reasonable action with regard to the review. Such legal or administrative action may include, but not be limited to, criminal investigation or indictment, bankruptcy, or civil action where the appellant is either plaintiff or defendant.

(5) The review officer may require that the appellant submit a copy of the transcript of the hearing if one was arranged for by the appellant.

(6) The review officer will review the appeal case file, applicable statutes and regulations, the insurance contract, any additional written information furnished by the appellant including appellant's comments on the transcript of the hearing, and any additional information as the review officer deems necessary. However, if the review officer reviews any information the appellant has not previously had the opportunity to review, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond accordingly. The total time given the appellant to review and respond to the additional information generally will not exceed 20 working days.

§ 400.87 Review rules.

(a) The review will be a thorough examination of the hearing record, together with any additional available evidence and any additional material allowed, to determine whether the hearing officer's decision should be upheld. Any evidence may be received by the review officer without regard to whether that evidence could be employed in judicial proceedings. The

review officer has no authority to subpoena documents. However, all evidence submitted is subject to the provisions of 18 U.S.C. 1001 and 1014 and other Federal statutes.

(b) The review officer may request any further information he/she considers necessary to reach a proper decision. Such information must be provided to the review officer within ten (10) working days of the request unless an extension is granted for good cause shown. Failure of the appellant to provide information within the appellant's ability to provide may result in an unfavorable decision.

(c) The appellant may submit additional materials for the review officer's consideration. Such material must be provided to the review officer within the time period set by the review officer.

(d) The decision of the review officer shall be based on all information available to the review officer from whatever source. This may include, but is not limited to written facts presented for the review, the appeal case file, additional information requested by the review officer, appellant's written response to the additional information reviewed by the review officer, applicable statutes, procedures, and regulations, and the relevant crop insurance contract. Except for published statutes and regulations, all information forming the base for the review officer's determination will be included in the appeal file.

(e) If the review officer reviews any information which the appellant has not previously reviewed, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond to it. Usually, the total time given the appellant to review and respond to this information will not exceed 10 working days.

(f) The review officer generally will render a decision within 30 calendar days of the date of the hearing unless this would not allow sufficient time to consider any additional information requested by the review officer or submitted by the appellant within the applicable time limit. Failure of the review officer to meet this goal will not divest the review officer of jurisdiction.

(g) Notwithstanding any provision of this section, the review officer may delay issuing a decision pending receipt of additional evidence; issuance of a report by the Office of Inspector General, the Corporation Compliance Division or other investigative agency; at the request of the Office of Inspector General or other lawful authority; or at

the request of the United States Attorney's Office pending legal action; either civil or criminal or for other good cause as determined by the Director, Appeals and Litigation Staff.

(h) The review officer will inform the appellant, hearing officer, original decisionmaker, and any other person servicing the account, by letter, of the decision, the reason for it, and the action to be taken.

(i) The decision letter will be mailed to the appellant by Certified Mail, return receipt requested.

(j) The decision letter will be accompanied by a review report which states the facts surrounding the hearing including, but not limited to: the background of the review issue; a summary of evidence; citations of the applicable provisions of law, regulation, applicable crop insurance policy or endorsement, or other Corporation directive on which the review officer relied for his/her decision; and the review officer's findings.

(k) The decision letter will contain the following statement: "This review concludes your administrative appeal."

§ 400.88 Authority of review officer.

(a) The review officer has the authority to:

- (1) Rule on motions or requests;
- (2) Receive evidence;
- (3) Admit or exclude evidence;
- (4) Request evidence or additional information;

(5) Make a written determination based on the record including additional evidence submitted;

(6) Overturn or modify the determination of the hearing officer in whole or in part; and

(7) Commit the Corporation to a course of action, without regard to the amount of money at issue.

(b) The review officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation.

§ 400.89 Effect of decision.

(a) *Effective date.* When an appeal or review is concluded, the effective date of the action to be taken will be the date of the determination or decision being appealed.

(b) *Finality.* The decision made in an appeal is administratively final if no review is requested within the allowable time period. The decision made in a review is administratively final.

(c) *Timeliness.* Whenever an adverse determination concerning a policy or application is appealed and the hearing officer or review officer reverses or modifies the final administrative action, the official who made the determination

shall resume processing of the policy or application and notify the appellant of this within 15 days after receipt of the decision of the hearing officer or review officer. The official will advise the appellant if any further information is needed to complete processing.

§ 400.90 Records.

The hearing record and review record will be maintained in the offices of the Appeals and Litigation Staff for a minimum of three years.

§ 400.91 OMB control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H to part 400 in title 7 CFR.

§ 400.92 Basis of determination.

The hearing officer and the review officer may only determine facts and apply applicable statutes, rules and regulations, and procedures of the Corporation to those facts. The hearing officer and review officer have no authority to make equitable adjustments contrary to the statutes, rules and regulations, or procedures of the Corporation. Any decision of a hearing officer or review officer claiming to contradict published statutes, rules and regulations, or procedures is not within the authority of said officer and is void.

§ 400.93 Reservation of authority.

Nothing contained in the regulations in this subpart shall preclude the Manager of the Corporation from determining any question arising under the program to which the regulations in this subpart apply.

Done in Washington, DC, on December 3, 1991.

Jane Wittmeyer,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-31033 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0743]

Truth in Lending; Home Equity Disclosure Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on whether to revise provisions in Regulation Z (Truth in Lending) dealing with disclosure of any discounted initial rate and the payment examples for home equity lines of credit.

The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling. Although the final regulations implementing the law were adopted in June 1989, the approach adopted by the Board for disclosure of the discounted initial rate and certain payment examples has been examined by the U.S. Court of Appeals for the District of Columbia Circuit in recent litigation, and remanded to the Board for further consideration. The Board also is soliciting comment on a separate proposal to resolve a conflict between the home equity rules and provisions of the Federal Reserve Act and Regulation O (dealing with loans to bank executive officers).

DATES: Comment must be received on or before February 28, 1992.

ADDRESSES: Comments should refer to Docket No. R-0743 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW.) any time. Comments will be available for inspection in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation. Among other issues, Consumers Union challenged the provision in the regulation permitting

creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenged the part of the regulation permitting creditors to give disclosures about any "repayment" period—that is, when advances are no longer made and the consumer is paying off the amount borrowed—at the time the repayment period begins, rather than at the time of application. In March 1980 the Board published a proposed rule to amend the regulation relating to the rate cap and delayed timing issues. (55 FR 10465.) In September 1990 the Board adopted a final rule (55 FR 38310) (correction notice to 55 FR 39538).

The U.S. District Court for the District of Columbia issued a decision in favor of the Board on other aspects of the Consumers Union lawsuit in May 1990. *Consumers Union v. Federal Reserve Board* (736 F. Supp. 337). Consumers Union appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. In July 1991, the Court of Appeals issued its decision, deciding in favor of the Board on four of the issues presented on appeal, and remanding to the Board for further consideration two other issues. *Consumers Union v. Federal Reserve Board* (938 F.2d 266). The two issues deal with how creditors disclose a "teaser" or initial discounted rate, and the payment examples that must be provided in the preapplication disclosures. This notice solicits comment on these two issues.

The Board is soliciting comment on a third issue, unrelated to the litigation, which has arisen since the last revision of the home equity rules. That issue concerns the conflict between § 22 of the Federal Reserve Act, which regulates member bank loans to executive officers, and the substantive rules contained in the home equity statute.

(2) Proposed Amendments to Regulation Z.

(i) *Teaser Rate Provision.* The home equity statute provides that creditors must state any initial "teaser" or discounted rate in the preapplication disclosures. Specifically, the statute states: "[I]f an initial annual percentage rate is offered which is not based on an index—

(i) A statement of such rate and the period of time such initial rate will be in effect."

In the final regulations implementing the statute, the Board did not require that the discounted rate be stated. (Creditors are required to disclose the fact that the initial rate is discounted, state the period of time the rate will be

in effect, and alert consumers to "ask about" the current discount rate.) In its briefs to the District Court and the Court of Appeals, the Board stated that the regulation diverged from the statutory language in reliance on the Board's "exception" authority.

The Truth in Lending Act grants the Board broad authority in implementing the statute. Section 105 of the act provides that implementing regulations "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of (the Truth in Lending Act), to prevent circumvention or evasion thereof, or to facilitate compliance therewith." This broad delegation of authority to the Board has been recognized by the Supreme Court.¹ In its briefs to the District Court and Court of Appeals the Board argued that an exception from the statute's literal language was justified because of the difficulty of disclosing the varying discounted rates in the preprinted early disclosures. The Board's briefs stated that requiring the specific discount to be included on a preprinted form could lead to the curtailment of such a feature since the disclosures would have to be reprinted any time the discounted rate changes. The Board also noted that of most importance to the consumer is the fact that a rate is temporary and will increase after a short period of time, rather than the exact amount of the discount. Moreover, since discounted rates are lower than the fully indexed rate and beneficial to the consumer, it seems likely that lenders will make sure the consumer knows the current rate.

The Court of Appeals noted that the issue of the Board's exception authority had been raised for the first time during the course of the litigation, and had not been passed upon in the first instance by the Board itself. The Court thus remanded this portion of the regulation to the Board, to allow it to identify the scope of its exception authority under the Truth in Lending Act, and to decide whether an exception was necessary or appropriate in the case of the teaser rate provision.

Few commenters addressed the discount provision in the proposed regulation; thus the administrative record and other documents (such as the *Federal Register* notice) contain little discussion of this provision. The Board is soliciting additional comment on the

teaser rate disclosure and whether it should be left unchanged based on the reasons discussed above (or other reasons) or revised. If it were revised, the regulatory language could more closely track the statutory language and require creditors to state the discounted rate in the early disclosure, and delete the statement telling consumers to ask about the current discount. Commenters are requested to address the advantages and disadvantages to consumers of amending the regulation to require disclosure of the specific teaser rate. In addition, comment is requested on alternatives, such as requiring lenders to state the discount as a range, either specific numbers—for example, 5% to 7%—or specific amounts below the fully indexed rate—for example, 2 to 4 percentage points below the fully indexed rate. Such a disclosure could also alert the consumer to "ask about" the current discount. This would be similar to the approach taken in disclosing interest rate limitations for variable-rate plans. The Board requests comment on whether and the extent to which stating the specific amount of the discount is more burdensome than stating the amount of time any discounted rate is in effect, which is a current requirement of the regulation. Finally, the Board requests comment on whether an exception is necessary or appropriate in the case of the discounted initial rate disclosure.

(ii) Payment Examples Issue

The statute requires three types of payment examples to be provided for home equity plans: (1) "An example" showing the minimum periodic payment and amount of time needed to repay the line, based on a \$10,000 balance and a recent annual percentage of rate (the "minimum payment" example); (2) a statement of the minimum periodic payment based on a \$10,000 balance when the maximum annual percentage rate is in effect (the "worst case" example); and (3) an historical table, based on a \$10,000 extension of credit, showing how annual percentage rates and payments would have been affected by index value changes over the most recent 15 year period (the "historical example"). The statute says the worst case example and the historical example must be stated for "each repayment option" under the plan.

In implementing the statute, the Board chose to allow creditors to provide representative examples of the various payment options offered, rather than requiring separate examples for each payment option. Commenters on the proposed regulation stated that lenders

¹ See *Anderson Bros. Ford v. Valencia*, 452 U.S. 205 (1981); *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555 (1980).

often offer a number of minimum payment options to consumers. For example, a creditor may offer consumers the option of paying interest only or 1%, 2%, 3%, 4%, or 5% of the outstanding balance under its plan.

To try to ensure consumers were not overwhelmed with multiple payment examples, the Board created three categories of payment options: "Interest-only" plans requiring a fixed percentage or fraction of the outstanding balance; and all other payment options offered. (See comments 5b(d)(5)(iii)-2, 5b(d)(12)(x)-1, and 5b(d)(12)(xi)-7 of the Official Staff Commentary.) Under this rule, no matter how many payment options were offered, creditors would never have to disclose more than three minimum payment examples, three worst case examples, and three historical examples. Creditors would of course have to narratively describe all payment choices. In its briefs to the District Court and Court of Appeals the Board noted that requiring a worst case example and historical example for every payment option offered would result in "information overload" and would likely lead lenders to reduce the options offered to consumers. The briefs argued that the Board adopted a rule different from the one set out in the statute pursuant to its exception authority. Again, the Court of Appeals remanded this issue to the Board because the issue of the Board's exception authority under the Truth in Lending Act has not been developed in the rulemaking record, but was raised only in litigation.

The Board is thus soliciting additional comment on the payment example rules and whether they should be left unchanged based on the reasons given above (or other reasons) or revised. Specifically, comments are requested to address the advantages and disadvantages to consumers of requiring an historical example and worst case example for each payment option offered by the creditor. Commenters are also requested to discuss whether these examples provide necessary or appropriate use of the Board's exception authority under the Truth in Lending Act.

Regulatory language reflecting such an approach is included in this notice. If this approach were adopted the Board would make appropriate changes to the Official Staff Commentary to Regulation Z.

(iii) Home Equity and Regulation O Issue

The home equity statute provides that a creditor may not terminate and demand payment of a line of credit

except in three specified circumstances: fraud, failure of the consumer to make payments, and action by the consumer that impairs the security for the plan. The regulation implementing this provision provides that a creditor may not include in its contract a provision permitting it to terminate and accelerate the balance due except for these situations.

Section 22(g) of the Federal Reserve Act establishes rules relating to loans to executive officers by member banks. The law provides that a member bank may extend credit to its own executive officers provided "it is on condition that it shall become due and payable on demand of the bank" any time the person is indebted to any bank in an amount in excess of that prescribed by the appropriate federal banking agency. Regulation O, which implements the statute, provides that a bank making loans to any of its executive officers shall retain the right to call the loan any time the officer is indebted to the bank (or any other bank) in excess of 2.5% of the bank's capital and unimpaired surplus or \$25,000 (whichever is higher), but in all cases any amount over \$100,000. The statute and implementing regulation are intended to limit the risks of insider lending and implement safety and soundness policies.

If the home equity statute and section 22(g) of the Federal Reserve Act were both given full effect, they could be read as effectively prohibiting home equity loans by member banks to their executive officers. The home equity statute prohibits calling a loan except in the circumstances specifically set forth in the statute. Section 22(g) of the Federal Reserve Act prohibits member banks from making loans to executive officers unless the bank retains the ability to demand payment of the loan in certain circumstances. The home equity statute does not recognize the condition as a permissible reason to call a line of credit. Thus, if both laws were given full effect, member banks could not offer home equity lines to their executive officers.

An alternative way of reconciling these provisions is by adherence to the rule that if two statutes are in irreconcilable conflict, the most recent should govern. (See, for example, *Natural Resources Defense Council v. United States Environmental Protection Agency*, 824 F.2d 1258 (1st Cir. 1987).) Adherence to the more recent home equity rules would mean the Congress intended to repeal the permissive provisions in section 22(g) allowing loans to executive officers under certain circumstances. Under this approach, member banks could offer home equity

lines to their executive officers, but would be prohibited from including demand features.

The Board believes that the Congress, in enacting the home equity statute, did not intend to override the provisions in the Federal Reserve Act dealing with demand provisions in loans made to executive officers. Absent evidence to the contrary courts generally have not deemed the Congress to have repealed a prior law when there is no indication of Congressional intent to do so.² Repeals by implication are accepted with great reluctance by the courts.³ There is no suggestion in the legislative history of the home equity statute that the Congress intended to repeal section 22(g) of the Federal Reserve Act and prohibit banks from making home equity loans to their executive officers.

The Board favors a different approach. The home equity statute deals broadly with home equity loans to borrowers generally, while section 22(g) of the Federal Reserve Act, which deal with loans to specific types of borrowers, is much more specific in its focus. Broad statutes are not typically deemed to override specific statutes, absent evidence of Congressional intent to achieve that result. (See, for example, *Morton v. Mancari*, 417 U.S. 535 (1974).)

The Board believes the proper way to reconcile these provisions is by giving effect to the policies contained in section (g) of the Federal Reserve Act. This would permit banks to include a demand provision in loans to executive officers under which banks could exercise the demand feature only under the circumstances set forth in Regulation O. This approach would create an exception to the home equity rules to accommodate the express terms of section 22(g). This approach would give effect to the policies contained in the Federal Reserve Act, and at the same time create a very limited exception to the home equity statute. In addition to the statutory analysis, the Board believes its exception authority under the Truth in Lending Act may provide a basis for modifying the home equity rules and permitting member banks to include a demand feature in lines of credit made to executive officers. Thus the Board is soliciting comment on a proposed modification to the home equity regulation permitting a bank to include a call feature in its contract for home equity lines for executive officers and exercise that feature as provided in

² See, for example, *Rodriguez v. United States*, 490 U.S. 522, (1987).

³ See, for example, *Watt v. Alaska*, 451 U.S. 259 (1981).

section 22(g) of the Federal Reserve Act and implementing Regulation O.

If such a change were made, it would raise a related question regarding disclosures. Currently, § 226.5b(d)(4)(iii) of Regulation Z requires creditors to state the conditions under which a creditor may terminate a plan and accelerate the balance. (Alternatively, the creditor may include a statement with the disclosures that the consumer may receive upon request such information.) If the Board adopts the amendment to the home equity rules permitting a member bank to terminate the plan as permitted by the Federal Reserve Act and Regulation O, this would raise the issue of whether an additional disclosure should be made to executive officers alerting them to such a provision. Comment is solicited on whether executive officers would be adequately informed of such a provision by its inclusion in the contract, and whether this feature should be required to be disclosed with the early disclosures. Comment is also requested on whether the creation of a separate disclosure form for executive officers would impose unjustifiable costs and burdens on institutions, and whether inclusion of such a notice on a form given to all consumers would be desirable.

(3) Comments Requested

Interested parties are invited to submit comments on the proposal. Depending on the resolution of the teaser rate and payment example issues and the conflict between the home equity rule and Regulation O, in the final rule the Board may make conforming changes to the regulation, the model forms and clauses in appendix G, and the Official Staff Commentary. The Board is including language for the Regulation O issue and the teaser rate and payment example issues should the regulation be amended in response to issues raised by commenters.

(4) Economic Impact Statement

The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

(5) Text of Proposed Revisions

Certain conventions have been used to highlight the revisions that would be necessary if the regulation were changed. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-

faced brackets. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z, 12 CFR part 226, by modifying §§ 226.5b(d)(12)(v), 226.5b(d)(12)(vi), 226.5b(d)(12)(xi), 226.5b(f)(2)(ii), and 226.5b(f)(2)(iii), and by adding § 226.5b(f)(2)(iv).

List of Subjects in 12 CFR Part 226

Advertising; Banks, banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Reporting and recordkeeping requirements; Truth in lending.

1. The authority citation for part 226 continues to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. No. 96-221, 94 Stat. 170 (15 U.S.C. 1604 et seq); sec. 1204(c), Competitive Equality Banking Act, Pub. L. No. 100-86, 101 Stat. 552.

Subpart B—Open-End Credit

2. 12 CFR 226.5b is amended by revising paragraphs (d)(12)(v), (vi), and (xi), first sentence, and (f)(2)(ii) and (iii), and by adding paragraph (f)(2)(iv) to read as follows:

§ 226.5b Requirements for Home Equity Plans.

(d) *Content of disclosures.* * * *
(12) *Disclosures for variable-rate plans.* * * *

(v) A statement that the consumer should ask about the current index value, margin, [discount or premium,] and annual percentage rate.

(vi) [A statement that] ►If◄ the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, ►the initial rate◄ and the period of time such initial rate will be in effect.

(xi) An historical example ►for each payment option◄, based on a \$10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise—

(1) * * *

(2) * * *

(i) * * *

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; [or]

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any

right of the creditor in such security [.] ►; or

(iv) Federal law dealing with credit extended to executive officers of a depository institution specifically requires that as a condition of the plan the credit shall become due and payable on demand. ◄

By order of the Board of Governors of the Federal Reserve System, December 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-30918 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 556

Policy Statement on Branching by Federal Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its policy statement on branching by federal savings associations. The proposed amendment deletes current regulatory restrictions on the branching authority of federal savings associations to permit nationwide branching to the extent allowed by federal statute. The amendment is intended to facilitate consolidation and geographic diversification among savings associations, and thereby foster safety and soundness, and to improve the quality of services available to customers. The proposal also clarifies a provision regarding examination of a branching applicant's past record of compliance with the Community Reinvestment Act (CRA) and otherwise updates and streamlines the branching policy statement by deleting some provisions and consolidating the remaining paragraphs by subject matter.

DATES: Comments must be received on or before January 29, 1992.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., street level.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney, (202) 906-6241; Kevin A. Corcoran, Assistant Chief Counsel, (202) 906-6962; V. Gerard Comizio, Deputy Chief

Counsel, Corporate and Securities Division, (202) 906-6411; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906-6459; Therese L. Monahan, Project Manager, Supervisory Programs, (202) 906-5740; or Paula Lane, Financial Analyst, Corporate Activities Division, (202) 906-6727; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Section 5(r) of the Home Owners' Loan Act (HOLA),¹ applicable to federal associations since enactment of the Garn-St Germain Act of 1982, permits a federal savings association to branch outside of its home state if the association meets the domestic building and loan test of section 7701(a)(19) of the Internal Revenue Code or the asset composition test of subparagraph (c) of that section,² and it, with respect to each state outside of its home state where the association has established branches, the branches, taken alone, also satisfy one of the two tax tests. Few other laws have been enacted that restrict or otherwise limit the branching authority of federal savings associations.³

Through the HOLA, the Congress has given the OTS and its predecessor, the Federal Home Loan Bank Board (Bank Board), exceptionally broad authority to regulate, from "cradle to grave,"⁴ the branching operations and other activities of federal thrifts. On numerous occasions the courts have confirmed that the OTS's authority in this respect is plenary and not bounded by any

restrictions of state law.⁵ Pursuant to this authority, therefore, federal savings associations may be allowed to branch on an interstate basis.

Notwithstanding this broad and plenary authority, however, for various policy reasons, the OTS and the Bank Board had restrained the scope of permissible branching with the branching policy statement. Even before promulgation of the first branching policy statement in 1967, the Bank Board had imposed additional restrictions on branching by federal associations beyond those required by statute. However, since 1981, amendments to the branching policy statement gradually have expanded the branching authority of federal thrifts in recognition of the emerging national market for depository institution consumer services and to encourage the acquisition of failing associations.⁶

B. Reasons For Allowing Nationwide Branching By Federal Associations

Allowing federal savings associations to branch interstate to the full extent permitted by statute will enable thrifts to diversify geographically their operations and thereby enhance safety and soundness. Associations with interstate networks will be able to diversify their loan portfolios and lines of business, and thereby spread the risk of losses resulting from fluctuations in regional economies. Some associations that are currently subsidiaries of multiple savings and loan holding companies also may be able to reduce costs and enjoy economies of scale by consolidating operations into one association.

While the ability to expand nationwide is not alone the solution to avoiding future costly failures of thrift institutions, in conjunction with the new capital standards and safeguards against risky investments applied to savings associations by the FIRREA, interstate branching ability can be an important cornerstone in a new foundation of institutional safety and soundness. The primacy of the federal interest in such stability and the solvency and viability of the federal deposit insurance system has recently been emphatically reaffirmed by the courts.⁷

The proposal also reflects and responds to the unprecedented liberalization of state thrift and bank branching laws seen in the decade of the 1980s. From 1982 to the present, 13 states passed nationwide banking or branching laws generally permitting associations from any state in the United States to acquire the branches of an in-state association or establish new branches within state, while, prior to 1982, only one state had allowed such form of interstate expansion. In the same period, 21 states enacted laws that could be characterized as permitting nationwide banking or branching on a reciprocal basis; that is, on the condition that reciprocal privileges are available to in-state associations branching in the foreign jurisdiction. An additional 18 states now have laws generally permitting interstate banking or branching, on a reciprocal basis, by out-of-state associations from specified regions. Many of these so-called national and regional reciprocity laws impose some restrictions and conditions regarding the types of transactions by which branching may be effected.

Presently, all but four states provide for some degree of interstate branching by commercial banks via acquisition of banks by bank holding companies headquartered in other states. Most of these states have laws that require reciprocity, and some states restrict branching to specific regions of states.⁸

Thus, the OTS believes that nationwide branching authority for federal savings associations will enhance the safety and soundness of the industry, reduce operating costs, increase healthy competition among depository institutions, and improve the quality of services furnished to customers. These benefits will help decrease the risk to the SAIF deposit insurance fund and, ultimately, to the taxpayer.

II. Revisions

A. Nationwide Branching Authority

Under the proposed amendment, paragraphs 556.5 (a)(1) and (a)(2) of the branching policy statement have been combined and modified to eliminate limitations imposed by the branching policy statement on federal savings associations' ability to branch throughout the United States and its

¹ 12 U.S.C. 1464(r).

² The requirement of meeting this test does not apply if: (1) The branch results from an emergency acquisition authorized under section 13(k) of the Federal Deposit Insurance Act (FDIA); (2) the branch was authorized for the association prior to October 15, 1982; (3) a state-chartered association organized under the laws of the federal association's home state would be permitted under relevant state law to operate in the other state; or (4) the branch was operated as a branch under state law prior to the association's conversion to a federal charter. The law also gives the Director of the OTS the discretion to allow the association, for good cause shown, up to two years to comply with the law.

³ Section 10(e)(3) of the HOLA, 12 U.S.C. 1467a(e)(3) (as added by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)); section 13(k)(4) of the FDIA, 12 U.S.C. 1823(k) (as added by section 217 of the FIRREA).

⁴ *Fidelity Federal Savings and Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 145, 102 S.Ct. 3014, 73 L.Ed.2d 664, 670 (1982) citing *People v. Coast Federal Savings and Loan Ass'n*, 98 F. Supp. 311, 316 (S.D. Cal. 1951).

⁵ *id.* See also *Independent Bankers Ass'n of America v. Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C. 1982); *Smallwood v. OTS*, No. 90-3183 (6th Cir. Feb. 7, 1991).

⁶ 46 FR 19221 (Mar. 30, 1981); 46 FR 45120 (Sept. 10, 1981); 47 FR 34125 (Aug. 6, 1982); 51 FR 16288 (May 2, 1986); 51 FR 16501 (May 5, 1986).

⁷ See *Smallwood v. OTS*.

⁸ See Report of the U.S. Treasury, "Modernizing the Financial System, Recommendations for Safer, More Competitive Banks," Discussion Chapter XVII, February 5, 1991 (submitted to the President of the Senate and the Speaker of the House of Representatives).

territories. The limitations that remain are statutory.

Paragraph 556.5(b)(1) of the proposal prohibits establishment or operation of a branch outside the state in which the association has its home office if such branching would violate section 5(r) of the HOLA.

The second limitation at paragraph 556.5(b)(2) of the proposal prohibits any branching that would result in formation of a multiple savings and loan holding company controlling savings associations in more than one state in violation of section 10(e)(3) of the HOLA.⁹ Formation of multistate multiple savings and loan holding companies are prohibited unless one of three exemptions set forth in sections 10(e)(3)(A)-(e)(3)(C) of the HOLA are met. The first exemption authorizes a savings and loan holding company or any of its savings association subsidiaries to acquire an association or operate branches in additional states pursuant to the supervisory acquisition provisions of section 13(k) of the FDIA. The second exemption permits a savings and loan holding company that, as of March 5, 1987, controlled an association subsidiary that operated an office in the additional state or states to acquire another association or branch in that state. The third exemption permits interstate holding company operations if the statutory law of the state in which the association to be acquired is located specifically authorizes acquisition of its state-chartered associations by state-chartered associations or their holding companies in the state where the acquiring association or holding company is located.

Paragraph 56.5(b)(3) of the proposal prohibits establishment and operation of new branch offices by an association in violation of section 13(k)(4) of the FDIA.¹⁰ Section 13(k)(4) generally permits savings associations eligible for assistance under section 13(c) of the FDIA that are acquired by banks or bank holding companies pursuant to section 13(k) of the FDIA to retain and continue to operate branches existing at the time of the acquisition.

B. Provisions Under the Community Reinvestment Act of 1977

The proposal also clarifies provisions regarding compliance with the Community Reinvestment Act of 1977 (CRA) by all branching applicants.¹¹

Consistent with the CRA¹² and the OTS's regulations thereunder,¹³ the branching policy statement requires the OTS to review and evaluate a branching applicant's record of compliance with the CRA. In addition, the CRA, the regulations and the branching policy statement indicate that such a record may be the basis for denial of a branching application.

On March 21, 1989, the Bank Board, along with the other federal financial institution regulatory agencies, adopted a policy statement on the CRA (the CRA policy statement) to update implementation of the law and re-emphasize the importance of compliance with the CRA by all regulated financial institutions.¹⁴ The CRA policy statement stressed that an applicant for branching or other type of transaction should address the applicant's CRA responsibilities and have policies necessary for compliance in place and working before filing an application. The CRA policy statement also noted that, in general, commitments for future action cannot be used to overcome a seriously deficient record of performance, but may, where appropriate, justify conditional approval effective only after the applicant has satisfied all appropriate conditions.

To emphasize the importance of an applicant's past record of CRA compliance, the proposal modifies the CRA provisions of the branching policy statement to state that, in most cases, commitments by a branching applicant for future action to improve the applicant's record of compliance with the CRA, however detailed, shall not be sufficient to overcome a deficient CRA record at the time of application.

III. Technical Revisions

Under the proposed amendment, the provisions regarding protest and oral argument procedures have been deleted as duplicative and replaced by a new provision that requires compliance with the procedures set forth in other policy pronouncements of the OTS. A reference also has been made to the OTS's branching application requirements at 12 CFR 545.92. Several provisions of the branching policy statement have been consolidated into new paragraphs grouped by common subject matter to enhance comprehension.

The proposal also deletes paragraph 556.5(h) that provides that when an association applies to establish a branch within the market area of another

savings association having a similar name, the OTS may prescribe the name of such branch and the type of advertising that may be used in connection with it to "minimize public confusion and prevent unfair competition." This paragraph has remained essentially unchanged from its adoption in 1980. The Bank Board occasionally permitted (and, in the case of a protested application, required) use of a "doing business as" or trade name for a branch to minimize public confusion and promote safe and sound practices. The standards in paragraph 556.5(h) are very similar to those in the Bank Board's corporate title regulation, 12 CFR 543.1, prior to its amendment in 1982. With that amendment, the Bank Board eliminated consideration of unfair competition and trademark infringement issues from corporate title review standards because, among other things, these issues were better addressed in other forums and the procedures then in place for review of these issues were inadequate. A conforming change was not made to the branching policy statement, however. This inadvertent omission is corrected in the proposed rule. Henceforth, the OTS generally will not attempt to referee unfair competition and trademark infringement disputes. Such disputes will be left to the parties to settle in litigation or by other appropriate means. Similarly, and for the same reasons, the "public confusion" language has been eliminated from the branching policy statement.

Solicitation of Comments

The OTS solicits comment on all aspects of this proposed regulation. To facilitate processing of comments, the OTS requests that any comments clearly reference the Resolution Number of this proposal. The OTS has determined that a thirty (30)-day public comment period is appropriate because prompt action is in the public interest.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OTS has determined that this proposed regulation does not constitute a "major rule" for purposes of Executive Order 12291. Therefore, preparation of a regulatory impact analysis is not required.

⁹ Note 3 *supra*.

¹⁰ *Id.*

¹¹ Housing and Community Development Act of 1977, Pub. L. No. 95-128, tit. 8, sec. 802, 91 Stat. 1147 (codified at 12 U.S.C. 2901, *et seq.* (1980)).

¹² U.S.C. 2903.

¹³ 12 CFR 563e.8.

¹⁴ See Resolution No. 89-1039.

List of Subjects in 12 CFR Part 556

Savings associations.

Accordingly, the Director of the OTS hereby proposes to amend part 556, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUPCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS**PART 556—STATEMENTS OF POLICY**

1. The authority citation for part 556 continues to read as follows:

Authority: Sec. 552, 80 Stat. 388, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701j-3); secs. 902-920, as added by sec. 2001, 92 Stat. 3728-3741, as amended (15 U.S.C. 1693-1693r).

2. Section 556.5 is revised to read as follows:

§ 556.5 Establishment of branch offices.

(a) *General.* As a general policy, the OTS permits a federal savings association to branch freely in any state or states of the United States and its territories, except as provided in paragraph (b) of this section.

(b) *Limitations.* No branching will be permitted under paragraph (a) of this section that will result in the following:

(1) Establishment or operation of a branch outside the state in which the association has its home office in violation of section 5(r) of the Home Owners' Loan Act;

(2) Formation by any company of a multiple savings and loan holding company controlling savings association in more than one state in violation of section 10(e)(3) of the Home Owners' Loan Act; or

(3) Acquisition of a savings association and the establishment and operation of new branches by such savings association in violation of section 13(k)(4) of the Federal Deposit Insurance Act.

(c) *Branching applications—(1) General.* Prior to opening a branch, an association must obtain approval of a branching application pursuant to § 545.92 of this subchapter. The OTS may approve or deny an application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. In granting supervisory clearance to an applicant, the OTS will consider whether the policies, condition, and operation of the applicant are satisfactory and afford no basis for supervisory objection.

(2) *Regulatory capital.* For supervisory clearance, an association's regulatory capital should meet or exceed the minimum requirements established by law and applicable regulations of the OTS.

(3) *Community reinvestment.* Pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. 2901), the OTS encourages savings associations to help meet in an affirmative and continuing manner the credit needs of all communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. The OTS will review and evaluate an applicant's record under part 563e of this chapter, may deny an application based on the assessment of an association's CRA record, and may approve a branch application on condition that the association improve specific aspects of its community-investment-related practices and performance. However, in most cases, commitments by an applicant to improve an applicant's record of compliance with the CRA shall not be regarded as sufficient to overcome a deficient CRA record at the time of application.

(4) *Protest and oral argument.* Protests to applications for branches must be submitted in writing and factually documented. Procedures governing protests and oral arguments are set forth in supervisory guidance issued by the OTS.

(5) *Expiration of approvals.* If an association does not open a branch within the time specified in the approval, and the Director or his or her designee finds that the association is not making a good-faith effort to open the branch promptly, the approval will be deemed to have expired and the association will be required to reapply if it wants to branch in that location.

(d) *Branch closings.* Pursuant to § 545.94 of this subchapter, the OTS requires an association to notify the OTS when it plans to close a branch.

Dated: March 5, 1991.

By the Office of Thrift Supervision

Timothy Ryan,

Director.

[FR Doc. 91-30906 Filed 12-27-91; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL HOUSING FINANCE BOARD**12 CFR Part 902**

[91-641]

Operations

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to

establish: the procedures for the semiannual assessments on the Federal Home Loan Bank System for Finance Board administrative and operating expenses; the procedures for conducting the Finance Board's monthly survey of rates and terms on conventional, one-family nonfarm mortgage loans; the schedule of fees for services available from the Finance Board; and the Minority Contractors Outreach Program.

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:**A. General**

This regulation establishes procedures for various Finance Board administrative activities not directly related to the supervision of the Federal Home Loan Banks ("FHLBB"), yet required under either the Federal Home Loan Bank Act ("Bank Act") or other statutes.

1. Assessments

The Bank Act, as amended, provides for funding of the Finance Board through semiannual assessments levied on the FHLBBs. This funding mode is similar to the one used by the former Federal Home Loan Bank Board ("FHLBB"), with one notable difference. While the FHLBB was subject to an appropriations process, (15 U.S.C. 712a(b)(1) (1988) repealed; 103 Stat. 183, 436 (1989)), the Finance Board's funds have a nonappropriated status. 12 U.S.C. 1422b(c). Accordingly, the procedure proposed by the Finance Board to assess the Federal Home Loan Banks will differ somewhat from the procedure used by the FHLBB. The essential difference is that the Finance Board must formally adopt its annual budget prior to assessing the FHLBBs, whereas previously, the FHLBB's overall budget was determined through enactment of the annual Housing and Urban Development—Independent Offices Appropriations Acts.

2. Monthly Interest Rate Survey

Section 731 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No.

101-73, 103 Stat. 183, 423-426 (1989) amended section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) to make the Finance Board responsible for conducting a monthly survey of conventional, one-family nonfarm mortgage loans by all major lenders in order to determine a national average one-family house price. This survey was previously conducted by the FHLBB. This regulation details the procedures by which the Finance Board will conduct its survey.

3. User Fee Charges

Section 9701 of title 31, United States Code (31 U.S.C. 9701), calls for each federal agency to charge an appropriate fee for any services provided by it to only selected members of the public. The Office of Management and Budget provides guidance for agencies on promulgating such fees by regulation. The Finance Board provides an early facsimile transmission ("FAX") service to recipients of its adjustable-rate mortgage index, called "National Average Contract Mortgage Rate for Purchase of Previously Occupied Homes by Combined Lenders." These regulations provide the schedule of fees for such service.

4. Minority Contracting Requirements

Subsection (c) of section 1216 of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989, 103 Stat. 183, 529-30 (1989) codified at 12 U.S.C. 1833e, requires the Finance Board to promulgate regulations establishing a minority outreach program in conjunction with its contracts for the procurement of goods or services in furtherance of its duties or mission. This regulation implements that requirement.

B. Administrative Procedure Act

The Finance Board is adopting this regulation as a proposed rule with a thirty day notice and comment period.

C. Regulatory Flexibility Act

The Board of Directors certifies that this rule will not have a significant economic impact on a substantial number of small entities. Four out of the five topics herein deal with internal agency procedures, and only the Minority Contractors Outreach Program will effect small entities. However, it will not have a substantial effect because of the nature of the Finance Board's procurement process. A portion of Finance Board procurement contracts already go to minority-owned entities. The Minority Contractors Outreach

Program is a recruitment program and does not establish quotas or otherwise alter the agency's established procurement process for goods or services.

List of Subjects in 12 CFR Part 902

Assessments, Federal home loan banks, Government contracts, minority businesses, mortgages.

Accordingly, the Finance Board proposes to add part 902 as follows:

PART 902—OPERATIONS

Sec.

902.1 Definitions.

902.2 Assessments.

902.3 Mortgage interest rate survey.

902.4 Schedule of charges for agency services.

902.5 Minority Contractors Outreach Program.

Authority: Sec. 2B, as added by 103 Stat. 183, 413 (12 U.S.C. 1422b); sec. 18(b) as amended by 103 Stat. 183, 419 (12 U.S.C. 1438(b)); Pub. L. No. 101-73, 103 Stat. 183, 529-30 (1989) (12 U.S.C. 1833e).

§ 902.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank System means the Federal Home Loan Bank System, consisting of all twelve Banks.

Board of Directors means the governing Board of Directors of the Federal Housing Finance Board.

Business means an enterprise, including a firm, corporation, joint stock company, partnership, joint venture or association that engages in commercial activity on a regular basis.

Chairperson means the Chairperson of the Board of Directors.

Finance Board means the Federal Housing Finance Board.

Minority means:

(1) A male person or persons classified as either an African-American, a Native-American, a Hispanic-American, or an Asian-American; or

(2) A female person or persons regardless of ethnic or racial classification.

Minority-owned entity means a business, including an enterprise, corporation, professional association, partnership, joint stock company or joint venture that is:

(1) Owned or controlled by any combination of African-Americans, Native-Americans, Hispanic-Americans or Asian-Americans, regardless of gender, where such ownership or control includes the management of the daily business operations; or

(2) Owned or controlled by female persons, regardless of ethnic origin, where such ownership or control includes the management of its daily business operations.

§ 902.2 Assessments.

(a) Pursuant to section 18(b) of the Federal Home Loan Bank Act, as amended, the Finance Board will assess the Bank System for such funds as may be necessary to meet the annual administrative and operating expenses of the Finance Board. This section governs the procedures under which each Bank shall be assessed for its portion of the Finance Board's annual administrative and operating expenses.

(b) Prior to the end of each calendar year, or as soon as possible thereafter, the Board of Directors shall adopt a resolution approving an annual budget for all Finance Board expenses for the next calendar year. A copy of such resolution shall be forwarded to each Bank president.

(c) The Finance Board shall make two assessments on the Bank System for each calendar year. The first assessment shall cover the first six-month period of each calendar year, and the second assessment shall cover the second such period.

(d) Each assessment for each six-month period on the Bank System will be for one-half of the budget approved by the Board of Directors pursuant to paragraph (b) of this section, except that such amount may be offset by:

(1) Revenues received by the Finance Board from subleasing portions of its office building in the District of Columbia; and

(2) Funds, determined by the Finance Board to be surplus funds from prior assessments, in the Finance Board's special deposit account in the United States Treasury at the time of assessment.

(e) Each assessment made pursuant to this section shall be paid by the Bank System. Each Bank's *pro rata* share of such assessment will be based on the total paid-in value of all capital stock of the Bank System.

(f) Prior to an assessment being made pursuant to this section, the Board of Directors shall adopt a resolution notifying the Banks that an assessment is being levied for a particular six-month period, with a copy of such resolution being forwarded to each Bank president.

(g) Following the notification in paragraph (f) of this section, the Chairperson, or designee, shall determine the assessment for each Bank and notify the Banks in writing of the amount due under the assessment.

based on the formula in paragraph (e) of this section.

(h) Unless otherwise instructed by the Chairperson, or designee, each Bank may transfer its *pro rata* share of an assessment to the Finance Board in equal monthly installments over the six-month period covered by the assessment.

§ 902.3 Mortgage Interest Rate Survey.

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans in the following manner:

(a) *Initial survey.* Each month, the Finance Board samples approximately 1,000 mortgage lenders (savings and loan association, savings banks, commercial banks, and mortgage loan companies) to report the terms and conditions on all conventional mortgages (not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10-91. The data is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type, by lender size class, and by state. The Finance Board tabulates the data and publishes it late in the following month.

(b) *Adjustable-rate mortgage index.* The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders." This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on the renegotiable rate mortgages.

(c) *Means of survey.* The Finance Board collects the data for the compilation of the indices described in this section by contract. Pursuant to such contract, a Finance Board form, entitled "Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans" (FHFB Form 10-91), is distributed to selected lending institutions. The data is collected, compiled and processed, and the completed survey results are forwarded to the housing Finance Directorate of the Finance Board for tabulation and distribution.

§ 902.4 Schedule of charges for agency services.

(a) *Authority.* Section 9701 of title 31, United States Code, directs government agencies to charge a fee for any special service provided to a selected segment of the public who make use of such special service (31 U.S.C. 9701). The Office of Management and Budget's Circular A-25 contains guidelines for agencies to follow when promulgating regulations for such user fee charges. This section implements this authority.

(b) *ARM Index FAX Broadcast Service.* The Finance Board makes available for early morning special facsimile transmission ("FAX") a particular adjustable-rate mortgage ("ARM") index, from its Mortgage Interest Rate Survey, which is called the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders."

(1) *Subscription.* (i) The ARM Index FAX Broadcast Service is available on an annual subscription basis only. Parties may subscribe to the service by contacting the Housing Finance Directorate, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, and forwarding the necessary fees to the same address.

(ii) Subscribers may cancel their subscriptions by notifying the Housing Finance Directorate.

(2) *Fee charge.*—(i) *Schedule.* The annual fee of the ARM Index FAX Broadcast Service is \$36.00, representing twelve months of service at \$3.00 per month;

(ii) *Prepayment.* Each request for subscription to the ARM Index FAX Broadcast Service must be accompanied by a remittance of the entire annual fee for the subscription period;

(iii) *Form of prepayment.* Each fee prepayment accompanying a request must be by check, bank draft or a money order issued by the United States Postal Service and made payable to the Federal Housing Finance Board;

(iv) *Refund of prepayment.* Upon cancellation of the ARM Index FAX Broadcast Service, the Finance Board will remit to the canceling subscriber three (3) dollars for every month of canceled service, except that no money will be refunded for any fraction of a month.

(3) *Special programming charge.* The Finance Board may at its discretion provide special tabulations of other Mortgage Interest Rate Survey for individual users, upon written request, at the prepaid price of \$100 per hour for the analyst's time, with a minimum charge of \$100.

§ 902.5 Minority Contractors Outreach Program.

(a) *Scope.* (1) This section establishes the Finance Board's Minority Contractors Outreach Program and designates the officials responsible for implementing the Program and its oversight.

(2) The Minority Contractor Outreach Program:

(i) Seeks to encourage the maximum participation of minorities in all Finance Board procurement contracts for goods or services;

(ii) Shall operate consistent with the principle of full and open competition for all Finance Board contracts, and the concept of contracting for minimum agency needs at the lowest practical cost; and

(iii) Shall not be construed to be a substitute means of procurement for the Finance Board's established procedural process for the procurement of goods or services.

(b) *Responsibilities.* (1) The Director of Administration shall have general oversight of the Minority Contractors Outreach Program.

(2) The Chairperson shall:

(i) Appoint a Minority Contractors Advocate; who shall—

(A) Have primary responsibility for furthering the purposes of the Minority Contractors Outreach Program;

(B) Be responsible for challenging barriers to, and promoting maximum participation by, minorities or minority-owned entities in the Finance Board procurement process;

(C) Develop a manual describing the procedures by which the Finance Board will implement the Minority Contractors Outreach Program.

(ii) Assign such Advocate only such duties or responsibilities, with respect to the Minority Contractors Outreach Program, as are consistent with this section, and shall not assign such Advocate any duties of a contracting officer or of a technical representative on a contract.

(c) *Program components.* The Minority Contractors Outreach Program procedures shall include the following:

(1) *Contractor File.* (i) The Minority Contractors Advocate shall compile and maintain an ongoing file consisting of minority contractors or minority-owned entities that are interested in contracting with the Finance Board for goods or services through the competitive bidding or negotiation procurement process.

(ii) The information in such file shall list the current name and address of each such minority contractor or minority-owned entity and shall

categorize each name and address as follows:

- (A) Accounting services;
- (B) Building support services;
- (C) Computer services;
- (D) Consulting services;
- (E) Legal services;
- (F) Office supplies and equipment.

(2) *Solicitation.* The Minority Contractors Advocate shall implement a procedure for soliciting potential candidates for the contractor file provided for in paragraph (c)(1) of this section, by means of any of the following:

- (i) Referrals from executive departments, agencies or instrumentalities of the Federal Government;
- (ii) Direct solicitation of selected candidates;
- (iii) Advertising by direct mail or publications specifically directed to minorities, or minority-owned entities;
- (iv) Sponsoring Finance Board seminars designed to explain the Minority Contractors Outreach Program to minority contractors or minority-owned entities who have the potential of contracting with the Finance Board;
- (v) Attendance at conventions, seminars or other professional conferences of minorities or minority-owned entities.

(3) *Certification.* (i) No minority contractor or minority-owned entity (whether solicited by the Minority Contractors Advocate or not) may participate in the Finance Board procurement process as a minority contractor or minority-owned entity unless certified as such by the Chairperson, or designee.

(ii) The certification shall be by a means and form approved by the Finance Board.

(iii) Nothing in this section shall be deemed to prevent a non-certified minority contractor or minority-owned entity from participating in the procurement process as a contractor or entity not designated or deemed a minority or minority-owned.

(4) *Promotion.* (i) The Minority Contractors Advocate shall maintain an ongoing campaign of promotion of the Minority Contractors Outreach Program with all certified minority contractors and minority-owned entities.

(ii) This campaign shall include:

(A) Ongoing promotion of the Minority Contractors Outreach Program with certified minority contractors and minority-owned entities;

(B) Alerting appropriate certified minority contractors and minority-owned entities when the Finance Board makes a solicitation for a bid or initiates

the negotiation of a procurement contract for goods or services;

(C) Acting as a liaison between the Finance Board contracting authorities and a particular minority contractor or minority-owned entity; and

(D) Assisting any certified minority contractor or minority-owned entity to understand Finance Board contracting procedures or other information regarding a particular bid or contract.

(iii) Nothing in this paragraph shall authorize the Minority Contractors Advocate to represent the interests of any minority contractor or minority-owned entity in any contract matter or bid before the Finance Board.

(5) *Contract award guidelines.*—(i) *Contracts not exceeding \$25,000.* The Finance Board Contracting Officer shall, from time to time, award contracts for the procurement of goods or services, that do not exceed \$25,000 in cost, to certified minority contractors or minority-owned entities listed in the contractor file provided for in paragraph (c)(1) of this section, to the extent not inconsistent with the principles of the Federal Government procurement process and the need of full and open competition. Such awards shall be made after consultation with the Minority Contractors Advocate.

(ii) *Contracts exceeding \$25,000.* Contracts for goods or services that exceed \$25,000 will be awarded strictly on the basis and principles of the Federal Government procurement process and the need for full and open competition. The Finance Board Contracting Officer and the Minority Contractors Advocate shall work to ensure, promote and facilitate the maximum participation of minority contractors or minority-owned entities in the Finance Board's procurement of goods or services in excess of \$25,000.

By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91-31008 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01

12 CFR Part 904

[91-642]

Freedom of Information Act Regulations

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to issue regulations governing procedures

for disclosure of information and records to the public pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. 552).

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") amended the Federal Home Loan Bank Act ("Bank Act") to create the Finance Board as an independent executive agency responsible for regulating the Federal Home Loan Bank System. 12 U.S.C. 1422a(a)(2) (Supp. I 1989). As such, the Finance Board is required to adopt regulations implementing the FOIA and to publish a fee schedule. 5 U.S.C. 552(a)(4) (1988). These proposed regulations fulfill that mandate. The FOIA further stipulates that an agency's FOIA fees conform to guidelines promulgated by the Office of Management and Budget ("OMB"). *Id.* at 552(a)(4)(A)(i). Accordingly, the Finance Board's fee schedule for FOIA is based on the OMB guidelines. 52 FR 10012 (Mar. 27, 1987). In formulating the FOIA fees, the Finance Board was guided by the cost to the Finance Board of complying with a FOIA request for information and by the fee schedules adopted by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the Board of Governors of the Federal Reserve System.

The FIRREA continued the regulations of the former Federal Home Loan Bank Board in effect until superseded by the appropriate successor. 103 Stat. 183, 357 (1989). These new regulations will replace the former Federal Home Loan Bank Board's FOIA regulations.

Regulatory Flexibility Act

In accordance with section 605(b) of title 5, United States Code, the Board of Directors of the Finance Board hereby certifies that these proposed regulations will not have a significant impact on a substantial number of small entities. The Board reaches this conclusion because of (1) the very small number of FOIA requests handled by the Finance Board since its creation in August of 1989 and because (2) in most of those FOIA requests, the fee—if it had been

assessed—would have fallen within the free 100 pages or two search hours exceptions. Accordingly, an analysis of the regulatory flexibility issues is not necessary.

List of Subjects in 12 CFR Part 904

Freedom of information

Accordingly, the Finance Board hereby amends part 904 by revising the part heading, and by adding the text, to read as follows:

PART 904—AVAILABILITY AND CHARACTER OF RECORDS

Sec.

- 904.1 Purpose and scope.
- 904.2 Definitions.
- 904.3 Published information.
- 904.4 Records available to public.
- 904.5 Procedure for requesting records.
- 904.6 Fees for records disclosed.
- 904.7 Records not disclosed.
- 904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.
- 904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.
- 904.10 Service of process.

Authority 5 U.S.C. 552, 12 U.S.C. 1422b(a)(1).

§ 904.1 Purpose and scope.

(a) This part implements section 552 of Title 5, United States Code, requiring the Federal Housing Finance Board to issue regulations informing the public of the places at which, the officers from whom, and the methods whereby the public may request records, and to set a uniform schedule of fees for obtaining records.

(b) Any action or determination required or permitted by this part to be performed by the Board of Directors, Executive Secretary or General Counsel may be delegated to another responsible Finance Board officer or employee specifically designated for that purpose.

§ 904.2 Definitions.

As used in this part:

Board of Directors means the five member governing Board of Directors of the Federal Housing Finance Board.

Commercial use request means a request from, or on behalf of, a requester seeking information for a use or purpose that furthers the commercial, trade or profit interest of the requester or ultimate user.

Direct costs means the expenditures actually incurred by the Finance Board in searching for, duplicating (and in the case of commercial use requests, reviewing) records in response to a FOIA request, including the time spent by Finance Board employees performing

the work and the cost of operating duplicating equipment.

Duplication means the process of making a copy of a record necessary to respond to a FOIA request, including a paper copy, microform, audio-visual material, or magnetic tape or disc.

Educational institution means a public or private college preparatory school, college, university or similar accredited institution of professional or vocational education that operates a program or programs of scholarly research, or similar type of institution.

Executive Secretary means the Executive Secretary to the Board of Directors of the Federal Housing Finance Board.

Finance Board means the Federal Housing Finance Board.

Finance Board record or record means the rules, statements, opinions, orders, memoranda, interpretations, letters, reports, and other papers, or portions thereof, in the possession of the Finance Board, its governing Board of Directors or any Finance Board officer, employee or agent. The term also includes any information contained in such record.

Financial Regulatory Agency means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the National Credit Union Administration.

FOIA means the Freedom of Information Act.

Non-commercial scientific institution means a nonprofit institution operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

Representative of the news media means a requester, as defined in this section, actively gathering information about current events of interest to the public for a publishing or broadcasting entity.

Requester means any person, including an individual, firm, corporation, organization, or other entity, making a request to the Finance Board for a record or records.

Review means the process of examining records in response to a commercial use request to determine whether any portion thereof is permitted to be withheld, and includes processing any records for disclosure, such as redacting portions thereof, to ready them for disclosure to a requester. The term does not include the time spent by Finance Board staff resolving general legal or policy issues regarding the application of FOIA exemptions to the record.

Search means the time spent locating records in response to a request, including page-by-page or line-by-line identification of information requested within a record, performed by Finance Board staff manually or by computer using existing programming.

§ 904.3 Published information.

(a) *Federal Register*. As required by Sections 552 and 553 of Title 5 of the United States Code, the Finance Board publishes in the *Federal Register* for the guidance of the public:

(1) A description of its organization;

(2) Statements of the general course and methods by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of available forms and where they may be obtained, and instructions as to the scope and contents of all papers or reports;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board of Directors;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rulemaking.

(b) *Annual Report*. The Finance Board submits an Annual Report to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1422b(d)). It is available to the public after its submission.

(c) *Other published information*. From time to time, the Finance Board issues statements to the press regarding particular dividend and credit actions, statements of policy, actions with respect to certain types of applications, and other matters.

(d) *Access to published information*. The publications referred to in paragraphs (b) and (c) of this section may be examined and, if available, copies may be obtained at the address set forth in § 904.5(b)(1).

§ 904.4 Records available to public.

(a) *General*. All Finance Board records are made available to any requester for inspection and duplication subject to the limitations stated in § 904.7 and § 904.9 of this part. The Finance Board may disclose a record to the public that is exempt from disclosure by section 552, Title 5, United States Code, or by § 904.7 of this part, where disclosure will not result in injury to a public or private interest intended to be protected by the FOIA or in a significant

interference with the statutory mission of the Finance Board or the national interest.

(b) *Available records.* Subject to § 904.7 of this part, the Finance Board makes available for inspection and copying:

(1) All final opinions by the Finance Board;

(2) Statements of policy and interpretations adopted by the Board of Directors, not published in the *Federal Register*; and

(3) Administrative manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Finance Board may delete identifying details in any material of the kinds above-described; in each such case the justification for such deletion will be fully explained in writing.

(c) *Votes of Board of Directors.* Subject to the provisions of § 904.7 of this part, a record of the final votes of each member of the Board of Directors in any proceeding is available for public inspection.

§ 904.5 Procedure for requesting records.

(a) *General.* Requests for access to, or copies of, Finance Board records shall be in writing, and describe the information or records requested in a manner reasonably sufficient to identify them. The request shall state that it is being made pursuant to the FOIA, and shall state the full name and address of the requester. The request also may specify a dollar limit which the requester is willing to pay for the costs of searching, reviewing or duplicating—in which event the Finance Board will limit its search, review or duplication of the record to the dollar amount specified in the request.

(b) *Initial determination.* (1) All requests to access or copy Finance Board records shall be in writing and addressed to the Executive Secretary, at the Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(2) If it is determined that a request does not reasonably describe the records sought, the Executive Secretary shall advise the requester that additional information is needed.

(3) The Executive Secretary shall forward any request for records made under this section to the appropriate Finance Board administrative unit with the custody of the requested record. Such unit will determine whether to grant or deny the request for records promptly after receipt from the Executive Secretary of a written request

for records that complies with paragraphs (a) and (b) of this section.

(4) All approvals or denials of requests for records under this part shall be in writing and signed by the Executive Secretary within ten days (except Saturdays, Sundays or Federal Government holidays) after receipt of the request by the Executive Secretary. Records will be disclosed after a party either pays the fees specified in § 904.6(l) or agrees to do so.

(5) All denials sent by the Executive Secretary to the requester shall:

- (i) State if the denial is in part or in whole;
- (ii) State the reasons therefor; and
- (iii) Inform the requester that the denial is not a final agency action and may be appealed under paragraph (c) of this section.

(c) *Appeal.* (1) A requester may appeal a denial of a request for records under paragraph (b) of this section by mailing an appeal to the Executive Secretary at the address set forth in paragraph (b)(1) of this section, within 30 days (except Saturdays, Sundays or Federal Government holidays) of the date of written notification of the denial.

(2) The appeal shall be by written application addressed to the members of the Board of Directors and shall state the grounds for the appeal.

(3) The Board of Directors, or its designee, shall determine whether to grant the appeal or uphold the initial determination within 20 days (excluding Saturdays, Sundays or Federal Government holidays) after receipt of the application by the Executive Secretary. If the initial determination is upheld, the Executive Secretary, on behalf of the Board of Directors, will notify the requester in writing of the decision and of the provisions for judicial review of the final action under 5 U.S.C. 552(a)(4).

(d) *Appeal during pendency of judicial review.* If a suit is brought in a United States district court under 5 U.S.C. 552(a)(4) after the Executive Secretary has denied a request for Finance Board records but before the Board of Directors has ruled on the appeal, the Board may at its option:

- (1) If an appeal has been made, continue to process the appeal; or
- (2) If an appeal has not been made, decide on its own to initiate an appeal.

(e) *Time computation.*—(1) *Agency.* For the Finance Board, the time limits in § 904.5(b)(4) and (c)(3) with respect to initial determinations or appeals shall begin as of the date on which a reasonably described, written request for records, or a written application on appeal, is actually received by the Executive Secretary.

(2) *Requester.* For a requester making an appeal, the time limits in § 904.5(c)(1) with respect to an appeal shall begin three days after an initial determination is post-marked.

(f) *Extension of time.* (1) The Executive Secretary may extend the time limits prescribed in § 904.5(b)(4) and (c)(3) for not more than ten working days by written notice to the requester, giving the reasons for the extension and a new date for the determination or appeal decision.

(2) Extensions may be granted for:

- (i) The need to search for and collect the requested records from establishments other than the Finance Board;
- (ii) The need to search, collect and examine a large amount of separate and distinct records demanded by a single request;
- (iii) The need to consult with another executive department or agency having substantial interest in the outcome of the request or appeal.

§ 904.6 Fees for records disclosed.

(a) *General statement.* In accordance with this section, the Finance Board shall recover the full allowable direct costs of providing copies of records pursuant to 5 U.S.C. 552. Accordingly, except as provided herein, the Finance Board shall assess fees for searching, reviewing and duplicating any record in accordance with the fee schedule herein. The fee schedule is based upon the category of requester and upon the services requested.

(b) *Categories of requesting parties.*—(1) *Designation.* The Finance Board shall categorize requesters based on the following five categories: (i) Commercial use requesters; (ii) educational institution requesters; (iii) non-commercial scientific institution requesters; (iv) representatives of the news media; and (v) all other requesters.

(2) *Limitations on fees charged.* The Finance Board shall assess fees pursuant to this section as follows:

(i) *Commercial use requesters.* Requesters making a commercial use request for a record shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at § 904.6(l). They are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. They may not be assessed fees for search or review.

(iii) *Non-commercial scientific institution requesters.* Requesters in this category will be assessed in the same manner as educational institution requesters.

(iv) *Representatives of the news media.* Requesters in this category will be assessed in the same manner as educational institution requesters.

(v) *All other requesters.* Requesters for Finance Board records who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(c) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions thereof are withheld in full under an exemption that is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(d) *Additional copies.* The Finance Board will furnish one copy of any record. The allowance of 100 free pages of duplication under paragraphs (b)(2)(ii), (iii), (iv) and (v) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each additional copy.

(e) *Requests under other statutes—(1) Privacy Act.* Requests from individuals for records about themselves filed in a system of records maintained by the Finance Board will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(2) *Sunshine Act.* Requests for copies of transcripts or minutes, or for transcription of electronic recordings of Board of Directors meetings, or portions thereof, closed to the public will be treated under the fee provisions of the government in the Sunshine Act (5 U.S.C. 552b).

(f) *Charges for unsuccessful search.* Where applicable under this section, fees may be assessed for time spent searching, even if the Finance Board fails to locate the records or if located records are determined to be exempt from disclosure. By making an application for a request for Finance Board records, a requester agrees to pay such charges for unsuccessful searches by Finance Board staff.

(g) *Procedure for fee collection.* The Finance Board will collect fees for the direct costs of searching, reviewing, duplicating and related costs under the following procedures:

(1) *Agreement.* If after receiving a request for Finance Board records, the Executive Secretary estimates that the search, duplication or review costs of such request will exceed \$25.00 but not exceed \$250.00, the Executive Secretary will notify the requester to execute an agreement with the Finance Board to pay the final actual costs of the request. Notwithstanding any provision of this part, the Finance Board will not disclose any record prior to receiving the executed agreement.

(2) *Advance payment.* If after receiving a request for records, the Executive Secretary estimates that the search, review or duplication costs of such request will exceed \$250.00, the Executive Secretary will notify the requester to make an advance payment of the estimated amount prior to the disclosure of the requested records, when the Executive Secretary determines that the requester either has no prior history of payment of FOIA fees to the Finance Board or has previously failed to pay a FOIA fee in a timely fashion. For the purposes of this paragraph, "timely fashion" means a payment received by the Finance Board within 30 days following receipt of disclosed records by the requester. The Finance Board shall promptly remit any amount of an advance payment that exceeds the actual final cost of disclosing the requested records, and the requester shall be liable for any actual cost exceeding the estimate.

(3) *Interest.* Where the requesting party has executed an agreement to pay the fee for the FOIA request, the Finance Board will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Finance Board, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments requested under this section.

(h) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the

assessment of fees, it may aggregate any such requests and charge accordingly.

(i) *Waiver or reduction of fee—(1) Collection and processing costs.* In its sole discretion, the Finance Board may opt to forego a fee for any costs of a request for records from any category if it determines that the routine costs of collection and processing of the fees are likely to equal or exceed the fee amount.

(2) *Public policy.* (i) The Finance Board will furnish documents without charge or at a reduced charge when it is determined that disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activity of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relationship of the records to Finance Board operations or activities;

(B) The informative value of the record to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's commercial interest, if any, in disclosure; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(iii) In making a request for a waiver or reduction of fees, a requester should include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The proposed use for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use or the release of the requested records; and

(D) If specialized use of a record is contemplated, a statement of the requester's qualification that are relevant to the specialized use.

(iv) The burden shall be on the requester to provide evidence or information in support of a waiver or reduction of fees.

(v) Determinations concerning waiver or reduction of fees shall be made by the Executive Secretary.

(vi) Appeals from such determinations shall be decided by the Director of the Office of Administration.

(j) *Fee payment method.* Fees assessed under this part will be delivered to the Executive Secretary by check or money order, payable to the "Federal Housing Finance Board."

(k) *FAX transmission.* The Executive Secretary and the requester may agree that any Finance Board records made available pursuant to a request under this part shall be made by facsimile transmission ("FAX"). The charge for a FAX transmission shall be the long distance charge on the telephone call, or .25 for a call within the metropolitan Washington area in addition to a .25 charge for use of the FAX apparatus.

(l) *Fee schedule.* Fees for searching, reviewing, duplicating, and providing Finance Board records under this section will be assessed in accordance with the following schedule:

Search (Manual):	
Supervisory/Professional Staff.	\$16.00 per hour.
Clerical Staff.....	\$8.00 per hour.
Search (Computer):	
Operator.....	\$16.00 per hour.
Computer output (PC).....	\$6.00 per hour.
Computer output (Main-frame).	[Actual cost].
Review.....	\$16.00 per hour.
Duplication:	
Photocopy.....	10 per page.
Computer generated.....	.76 per 1000 lines.
Copy of microfiche.....	.30 per page.
Transcription of audio tape.	\$4.50 per page.
Certification with seal and attestation by Executive Secretary.	\$5.00 per document.
Address labels.....	\$8.00 per 1000 labels.

(m) *Other charges.* Complying with requests for special services associated with providing records (e.g. supplying special computer tabulations, or sending copies by express mail or messenger) is entirely at the Finance Board's discretion, and fees will be assessed to cover the actual costs of such services.

§ 904.7 Records not disclosed.

(a) *General.* Except as otherwise provided in this part, or as may be specifically authorized by the Board of Directors, Finance Board records not otherwise publicly available will not be disclosed to a requester if such records are:

(1) Authorized (i) under criteria established by an Executive order to be kept secret because of national defense or foreign policy, and (ii) in fact so classified pursuant to such order.

(2) Related solely to Finance Board

internal personnel rules and practices.

(3) Specifically exempted from disclosure by:

(i) A statute other than the FOIA if:

(A) It requires that the record be withheld from the public in such a manner as to leave no discretion to the Finance Board; or

(B) It establishes particular criteria for withholding or refers to particular types of records to be withheld; or

(ii) Section 22 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1442).

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a requester other than an agency in litigation with the Finance Board, including records of deliberation between the Board of Directors and staff.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution or a Federal Home Loan Bank which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of an individual.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of the Finance Board, a Financial

Regulatory Agency or a Federal Home Loan Bank.

(b) *Segregation.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt from disclosure under this section.

(c) *Prohibition against disclosure.* (1) Except as authorized by this part or otherwise by the Board of Directors, no Finance Board officer, employee, or agent shall disclose or permit disclosure of any unpublished Finance Board record to anyone (other than another officer, employee, or agent properly entitled to such information for the performance of official duties), whether by giving out or furnishing such record or a copy thereof or by allowing any person to inspect, examine or copy such record or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical or similar information or unpublished records regarding Finance Board interpretations of statutory or regulatory provisions may be disclosed, orally or in writing, by a Finance Board officer, employee or agent, subject, however, to the restrictions stated in this section.

(2) Notwithstanding any other provision in this part, no disclosure of a record will be made to a requester when the Executive Secretary determines that such requester has failed to make a timely payment of a fee charged for a previous request for records under § 904.6(g) until such time as such requester pays the full fee plus accrued interest to the Finance Board.

§ 904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.

The Director of the District Banks Directorate may disclose a report of examination of a Federal Home Loan Bank, or related record, to a Financial Regulatory Agency. Before disclosing such report, the Director shall make an affirmative determination that the requesting agency official is authorized to request the record on behalf of the agency and that the records are requested for a legitimate regulatory purpose and that the requesting agency has agreed not to disclose the contents of the record pursuant to the FOIA or the agency's regulations.

§ 904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.

(a) *Policy.* The Finance Board will not disclose information contained in

records that have been given to it by the Financial Regulatory Agencies.

(b) *Procedure.* Upon a receipt of a request for a record that has been given to the Finance Board by a Financial Regulatory Agency, the Finance Board will promptly forward the request to the appropriate Financial Regulatory Agency and also will notify the requester of this action. No further action by Finance Board will be taken on the request.

§ 904.10 Service of process.

(a) *Service on agency.* Any legal process served on the Finance Board demanding access to its records under the FOIA shall be addressed to the Executive Secretary and may be served by mailing the process, by certified mail, postage prepaid, to the address shown in § 904.5(b)(1).

(b) *Advice for person served.* (1) This section applies to any person in possession of a Finance Board record that may not be disclosed under this part, regardless of whether such person is a Finance Board officer or employee.

(2) Any person who is served with a subpoena, order or other process requiring attendance as a witness or document production of a record in any proceeding shall:

(i) Promptly advise the General Counsel of the Finance Board of such service and of all relevant facts, including the record requested; and

(ii) Advise both the authority issuing the subpoena, and the attorney for the party seeking the record, of the substance of these regulations.

(c) *Appearance by person served.* Except where disclosure of the record has been authorized by the Board of Directors or law, any person, described in paragraph (b)(1) of this section, who is required to respond to a subpoena, shall attend the proceeding and respectfully decline to produce such record or give testimony with respect thereto, on the basis of this part. If the authority nevertheless orders the disclosure of the record or testimony, such person shall continue to respectfully decline to produce such record or testimony and shall promptly report the incident to the Finance Board.

By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 91-31005 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01-M

12 CFR Part 906

[91-639]

Meetings of the Board of Directors of the Federal Housing Finance Board Under the Government in the Sunshine Act

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is subject to the Government in the Sunshine Act ("Sunshine Act"), and proposes to add to its regulations a new part on public information regarding meetings of its governing Board of Directors. These regulations will replace the provisions of the former Federal Home Loan Bank Board ("FHLBB") relating to public information on meetings of the Board of Directors used by the Finance Board to date.

These regulations are being added to give the public a greater awareness of the Finance Board's duties, responsibilities, and functions by enabling the public to observe meetings of its Board of Directors.

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, 103 Stat. 183, enacted on August 9, 1989, abolished the FHLBB and established the Finance Board as an independent executive agency responsible for overseeing the Federal Home Loan Banks ("FHLBanks"). The Conference Report on FIRREA expressly provides that the Finance Board will be subject to the Sunshine Act (5 U.S.C. 552b). H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424 (1989) reprinted in (1989) U.S. Code, Cong. & Ad. News 86, 463.

The FIRREA continued FHLBB regulations in effect until superseded by the appropriate successor. 103 Stat. 183, 357 (1989). Accordingly, the Board of Directors of the Finance Board has used the procedures in the former FHLBB Sunshine Act regulations until such time as new regulations are promulgated. On September 5, 1989, when the Finance Board established 12 CFR chapter IX (54

FR 36757), part 906 of its regulations was reserved for "Public Information Regarding Meetings of the Federal Housing Finance Board." These regulations now being proposed as part 906 will implement the Sunshine Act for the Finance Board.

Section 2 of the Sunshine Act states that its purpose is to provide the public the "fullest practical information regarding the decisionmaking processes of the Federal Government" while protecting legitimate individual privacy and "the ability of the Government to carry out its responsibilities." Pub. L. 94-409 sec. 2, 90 Stat. 1240-41 (1976) reprinted in 5 U.S.C. 552b note. The Sunshine Act does not clearly delineate when the public's right of observance gives way to an agency's need to carry out its administrative functions.

However, one United States Supreme Court case has drawn that line in favor of an agency's administrative needs over the public's right to observe meetings of its collegial governing body. In *FCC v. ITT World Communications Inc.*, 466 U.S. 463 (1984), the Supreme Court provided some guidance on this issue. That case holds that a gathering of members of an agency governing body and staff for background or generalized discussion of pending agency business is not a "meeting" within subsections 552b(a)(2) or (b) of the Sunshine Act. 466 U.S. at 469-72.

The proposed regulations include a provision enabling the Board of Directors to use an expedited process to close a meeting. The Sunshine Act makes this option available to an agency if a majority of its meetings may properly be closed to the public under 5 U.S.C. 552(c)(4), (8), (9)(A) or (10).

The Finance Board qualifies for the expedited closing process permitted in 5 U.S.C. 552b(d)(4). The exclusive function of the Finance Board is to oversee the FHLBanks and the Financing Corporation ("FICO"). In that capacity it reviews the budgets of the FHLBanks and FICO, and authorizes sales of FHLBank System consolidated bonds or FICO bonds. The Finance Board receives examination and operating reports on the FHLBanks and reviews audits of FICO.

Meetings of the Board of Directors involving the above mentioned issues may be closed to the public under 5 U.S.C. 552b(c)(4) (preventing disclosure of financial information that is privileged or confidential), (c)(8) (preventing disclosure of examination, operating or condition reports prepared for financial regulatory agencies) or (c)(9)(A) (preventing disclosure of information that would lead to

significant financial speculation in securities or might endanger the financial stability of a financial institution).

Accordingly, the Finance Board qualifies for use of the expedited closing process.

The Finance Board proposes to amend its regulations by adding a new part 906 to its general regulations.

Regulatory Flexibility Act

In accordance with section 605(b), title 5, United States Code, the Board of Directors of the Finance Board has determined, and hereby certifies, that the proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation focuses on the conduct of agency business before the Board of Directors but does not address any specific regulatory matter dealing with either the FHLBanks or the FICO, that might affect a small entity.

List of Subjects in 12 CFR Part 906

Sunshine Act.

Accordingly, part 906 is amended by revising the Part heading, and by adding the text, to read as follows:

PART 906—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD

Sec.

- 906.1 Purpose and scope.
- 906.2 Definitions.
- 906.3 Open meetings.
- 906.4 Closed meetings.
- 906.5 Procedures for closing meetings.
- 906.6 Notice of meetings.

Authority: 5 U.S.C. 552b; sec. 2B, 103 Stat. 412 (12 U.S.C. 1422b).

§ 906.1 Purpose and scope.

(a) This part is issued by the Federal Housing Finance Board pursuant to the requirements of the Government in the Sunshine Act (5 U.S.C. 552b). The Government in the Sunshine Act requires Federal agencies, headed by collegial bodies, to promulgate regulations to implement its provisions. The purpose of these regulations is to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board of Directors of the Finance Board while protecting the privacy rights of individuals and the ability of the Board of Directors to carry out its responsibilities.

(b) The Board of Directors shall not jointly conduct or dispose of official Finance Board business other than in accordance with this part.

§ 906.2 Definitions.

For the purpose of this part:

Sunshine Act means the Government in the Sunshine Act.

Board of Directors means the five member governing Board of Directors of the Federal Housing Finance Board.

Board Director or *Director* means a member of the Board of Directors.

Chairperson means the Chairperson of the Board of Directors and includes the Acting Chairperson.

Executive Secretary means the Executive Secretary to the Board of Directors, and includes the Acting Secretary in the event the Executive Secretary position is vacant.

Finance Board means the Federal Housing Finance Board.

Meeting means any deliberations of three or more Directors of the Board of Directors, that determine or result in the joint conduct or disposition of official Finance Board business, but does not include:

- (1) Discussions to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be disclosed;
- (2) Discussions to determine whether to schedule a meeting with less than seven days notice, or to change the time, place or subject matter of a scheduled meeting; and
- (3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual Directors for proposed actions, and notational voting by the individual Directors on such proposed actions.

Public observation means the right of the general public to attend any open meetings of the Board of Directors, but does not include the right to participate therein unless invited to do so by the Chairperson.

§ 906.3 Open meetings.

(a) Except as provided in § 906.4, every portion of every meeting of the Board of Directors shall be open to public observation.

(b) Unless otherwise specified in the public notice, open meetings of the Board of Directors shall be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the public notice.

§ 906.4 Closed meetings.

(a) The Board of Directors may close a meeting, or portion thereof, to public observation, or withhold information from the public pertaining to a meeting, when it determines that opening the meeting, or a portion thereof, or the public disclosure of information

pertaining to such meeting, or portion thereof, is likely to:

- (1) Disclose matters that are:
 - (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and
 - (ii) In fact properly classified pursuant to such Executive Order;
- (2) Relate solely to the internal personnel rules and practices of the Finance Board;
- (3) Disclose matters specifically exempt from disclosure by statute (other than the Freedom of Information Act (5 U.S.C. 552)), *Provided That* such statute:
 - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
 - (ii) Establishes particular criteria for withholding matters from the public or refers to particular types of matters to be withheld;
- (4) Disclose trade secrets or commercial or financial information that is obtained from a person and is privileged or confidential;
- (5) Involve accusing any person of a crime, or formally censuring any person;
- (6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
 - (i) Interfere with enforcement proceedings;
 - (ii) Deprive a person of a right to a fair trial or an impartial adjudication;
 - (iii) Constitute an unwarranted invasion of personal privacy;
 - (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;
 - (v) Disclose investigative technique and procedures; or
 - (vi) Endanger the life or physical safety of law enforcement personnel;
- (8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board or another agency responsible for the regulation or supervision of FHLBanks or other financial institutions.

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities;

(B) Significantly endanger the stability of any of the FHLBanks or any other financial institution; or

(ii) Significantly frustrate implementation of a proposed Finance Board action, except that this paragraph shall not apply in any instance where the Finance Board has already disclosed to the public the content or nature of its proposed action, or where the Finance Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena by the Board of Directors, or the Finance Board's participation in a civil action on proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) A meeting or portions of a meeting shall not be closed nor information withheld pursuant to paragraph (a) of this section if the Board of Directors finds that the public interest requires otherwise.

§ 906.5 Procedures for closing meetings.

(a) *Regular procedures.* (1) Except as provided in paragraph (b) of this section, a meeting of the Board of Directors, or portion thereof, will be closed to public observation, and information pertaining to such meeting, or portion thereof, will be withheld from the public, when a majority of the Board of Directors determines by recorded vote that such meeting, or portion thereof, or the withholding of information qualifies for exemption under § 906.4 and the Board of Directors does not find that the public interest requires otherwise.

(2) Except as provided in paragraph (a)(3) of this section, a separate vote of the Board Directors will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to paragraph (a) of this section.

(3) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting in such series involves the same particular

matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(4) The vote of each Board Director taken pursuant to paragraph (a) of this section shall be recorded, and no proxies shall be allowed.

(5) Whenever any person's interests may be directly affected by any portion of a meeting for any of the reasons referred to in paragraphs (a) (5), (6), or (7) of § 906.4, such person may send a written request to the Executive Secretary asking that such portion of the meeting be closed to public observation. The Executive Secretary will transmit the request to each Board Director and upon the request of a Director, a recorded vote will be taken of the Board of Directors whether to close the meeting to public observation.

(6)(i) Within one day of any vote taken pursuant to paragraph (a) of this section, the Finance Board will make publicly available through the Executive Secretary a written copy of such vote reflecting the vote of each Board Director.

(ii) If a meeting or portion thereof is to be closed to public observation, the Finance Board within one day of the vote taken pursuant to paragraph (a) of this section will make publicly available through the Executive Secretary a full, written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under paragraph (a) of § 906.4.

(7) Any person may request in writing to the Executive Secretary that an announced closed meeting, or portion thereof, be open to public observation. The Executive Secretary will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors on whether to open the meeting to public observation.

(b) *Expedited procedures.* (1) Since a majority of the meetings of the Board of Directors may be closed pursuant to paragraphs (a) (4), (8), (9)(i) or (10) of § 906.4, subsection (d)(4) of the Act (5 U.S.C. 552b(d)(4)) allows the Finance Board to use expedited procedures in closing meetings of the Board of Directors under these four paragraphs of § 906.4. The following are examples of meetings of the Board of Directors, or portions thereof, that may be closed to the public under these expedited procedures: sale of FHLBank consolidated bonds or notes; sale of Financing Corporation bonds; review of

examinations, operating or condition reports of FHLBanks.

(2) A decision to close a meeting, or portion thereof, under paragraph (b) of this section shall be made at the beginning of the meeting, or portion thereof, by majority vote of the Directors.

(3)(i) The Finance Board shall maintain a record of each of the votes taken by its Board of Directors to close a meeting, or portion thereof, or to withhold public access to information thereof, under paragraph (b) of this section.

(ii) A copy of such record, reflecting the vote of each Board Director on the question of closing a meeting, or portion thereof, or withholding public access to information thereof, under this paragraph (b) of this section, shall be made available to any member of the public upon request to the Executive Secretary.

(4) Public announcement of the time, place and subject matter of meetings, or portions thereof, closed under this paragraph (b) of this section shall be made at the earliest practical time.

(c) *Records of closed proceedings—*(1) *Transcripts or electronic recording.* Except as provided in paragraph (c)(2) of this section, the Finance Board shall make and maintain a complete transcript or verbatim electronic recording of the proceedings at each meeting, or portion thereof, closed to public observation under paragraphs (a) or (b) of this section.

(2) *Minutes.* The Finance Board may make and maintain a set of complete minutes, in lieu of such transcript or electronic recording, with respect to meetings, or portions thereof, closed or information withheld under paragraphs (a)(8), (9)(i) or (10) of § 906.4. Such set of minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Board Director on the question). All documents considered in connection with any action shall be identified in such set of minutes.

(3) *Availability of Records.* (i) The transcript, electronic recording or set of minutes of an item discussed, or of testimony received, at meeting, shall be made available promptly to the public through the Executive Secretary except in cases where the Board of Directors determines that the item or testimony contains information which may be withheld under § 906.4(a).

(ii) Copies of such transcript, electronic recording or set of minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(iii) The Finance Board shall maintain a complete copy of the transcript, verbatim electronic recording or complete set of minutes of each meeting, or portion thereof closed to the public, for at least two years after such meeting, or until one year after the conclusion of any proceeding of the Board of Directors with respect to which the meeting or portion thereof was held, whichever occurs later.

(d) *Legal certification for closing meeting.* (1) For every meeting, or portion thereof, of the Board of Directors closed pursuant to paragraphs (a) or (b) of this section, the General Counsel (or in the General Counsel's absence or incapacity the senior legal officer available) shall publicly certify that the meeting or portion thereof may be closed to the public pursuant to the Sunshine Act and this part, and specifically state the relevant exemption in support thereof.

(2) A copy of the certification, together with a statement from the Chairperson or, when appropriate, the Acting Chairperson or designee, setting forth the time and place of the meeting and the persons present, shall be retained in the permanent files of the Finance Board.

§ 906.6 Notice of meetings.

(a) *Scope of notice.* (1) Except as provided in paragraph (a) of § 906.4 that such information is determined to be exempt from disclosure, each open meeting of the Board of Directors, or each meeting closed under the regular procedures in paragraph (a) of § 906.5, will be preceded by public notice as described in this section.

(2) The notices for meetings of the Board of Directors closed under the expedited procedures pursuant to paragraph (b) of § 906.5 will be made in accordance with paragraph (b)(4) thereof.

(b) *Content of notice.* A notice of an open meeting or a meeting closed under the regular procedures in paragraph (a) of § 906.5 will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the Executive Secretary for information about the meeting. Each such notice shall be posted in the lobby of the Finance Board offices, and may be made available in addition by other means or at other locations as deemed desirable. Immediately following the posting of

each such notice, the Finance Board will publish the notice in the **Federal Register**.

(c) *Time—(1) Seven days notice.* Except as provided in paragraph (c)(2) of this section, a public notice of open meetings or meetings closed under paragraph (a) of § 906.5 will be made at least seven days in advance of each meeting.

(2) *Less than seven days notice.* When a majority of the Board of Directors determine by recorded vote that Finance Board business requires a meeting to be called at any earlier date, the seven-day prior notice rule shall be suspended and notice shall be made at the earliest practicable time.

(d) *Amendment of notice—(1) Time and place.* A change in the time or place of a meeting following public notice may be made only if announced at the earliest practicable time.

(2) *Subject matter.* A change in the subject matter of a meeting or a re-determination to open or close a meeting, or portions thereof, may be made after public notice only if:

(i) At least three Board Directors determine by recorded vote of the entire Board of Directors that Finance Board business so requires and that no earlier notice of the change was possible; and

(ii) The Finance Board publicly announces the change and the vote of each Board Director by posting a notice thereof in the lobby of the Finance Board offices at the earliest practicable time.

(3) *Timing of amendment.* A public announcement of a change in either the time, place or subject matter of a meeting may be made after the commencement of the meeting affected.

(4) *Publication of amendment.* Each change to a notice of a meeting will be published in the **Federal Register**, following the Finance Board's public announcement of the change.

By the Federal Housing Finance Board.
Dated: December 18, 1991.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 91-31007 Filed 12-27-91; 8:45 am]
BILLING CODE 6725-01

12 CFR Part 909

[91-640]

Privacy Act Procedures

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposed to

adopt regulations implementing the Privacy Act (5 U.S.C. 552a).

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

The Privacy Act applies to records kept by a federal agency on an individual person. It protects individuals from an agency's disclosure of information in such records without the written permission of the individual in question. The Privacy Act requires each agency to maintain regulations implementing the provisions of the Act. 5 U.S.C. 552a(f)(1) & (2) (1988).

The Finance Board is subject to the Privacy Act. The definition of an "agency" in the Act incorporates the definition used in the Administrative Procedure Act. 5 U.S.C. 552a(a)(1) *incorp. by ref. Id.* at 552(e). Since that definition of "agency" includes an independent regulatory agency, and since the Finance Board was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 as an independent executive agency (12 U.S.C. 1422a(a)(2) (Supp. I 1989)), the Finance Board is subject to the Privacy Act.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 stated that all former Federal Home Loan Bank Board (FHLBB) regulations continue in place until superseded. 103 Stat. 183, 357 (1989). These regulations will replace the former FHLBB Privacy Act regulations.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of title 5, United States Code, the Board of Directors of the Finance Board hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The regulation implements the Privacy Act, which is concerned with records of an agency containing information on individual persons only. The Privacy Act does not address business or corporate entities. Accordingly, a regulatory impact analysis of this regulation is not necessary or required.

List of subjects in 12 CFR Part 909**Privacy.**

Accordingly, the Finance Board hereby amends its general regulations, at chapter IX, title 12, Code of Federal Regulations by adding a new part 909 to read as follows:

PART 909—PRIVACY ACT PROCEDURES**Sec.**

909.1 General.

909.2 Definitions.

909.3 Procedures for requesting individual records in a system of records; appeal of denials.

909.4 Time, place and identification requirements for requests.

909.5 Disclosure of requested records.

909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.

909.7 Fees.

909.8 Penalties.

909.9 Exemptions.

Authority: 5 U.S.C. 552a.

§ 909.1 General.

(a) *Purpose.* This part implements the provisions of the Privacy Act, 5 U.S.C. 552a, which require each executive agency to promulgate regulations for the protection of the privacy of individual persons on whom the agency maintains information in a record.

(b) *Scope.* These regulations establish procedures for:

(1) Disclosing Federal Housing Finance Board information on an individual contained in its records, and

(2) Notifying an individual, on whom information in its records is kept, that a request for such information has been made.

§ 909.2 Definitions.

As used in this part:

(a) *Amendment* means any correction, addition or deletion of information contained in a record, as defined in paragraph (g) of this section.

(b) *Board of Directors* means the five member governing Board of Directors of the Federal Housing Finance Board.

(c) *Business days* means all days except Saturdays, Sundays or Federal Government holidays.

(d) *Finance Board* means the Federal Housing Finance Board.

(e) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted to the United States for permanent residence. The term includes the parent(s) having custody of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(f) *Maintain* means to keep or hold and preserve in an existing state, and includes the terms "collect," "use," "disseminate" and "control."

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Finance Board within a system of records, and that contains such individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, including a fingerprint, voice print or photograph.

(h) *Records systems manager* means the employee responsible for maintaining a designated system of records at the Finance Board, as such official or employee may be identified through public notice in the **Federal Register** from time to time by the Finance Board entitled: "Notice of Systems of Records on Individual Persons Maintained at the Federal Housing Finance Board."

(i) *Routine use* means the use of a record for a purpose compatible with the purpose for which it was originally created.

(j) *System of records* means a group of records maintained or controlled by the Finance Board from which information is or may be retrieved by the name of an individual or some identifying number, symbol or other identifying particular assigned to the individual.

(k) *Designated system of records* means a system of records, as defined in paragraph (j) of this section, that has been listed in the **Federal Register** as required by 5 U.S.C. 552a(e).

§ 909.3 Procedures for requesting individual records in a system of records; appeal of denials.

(a) *Current or former employees.* Any current or former Finance Board employee seeking access to such employee's official personnel record maintained by the Finance Board shall submit a request to the Finance Board in the manner prescribed by regulations of the Office of Personnel Management, at title 5, Code of Federal Regulations.

(b) *Other individuals.* (1) Individuals other than current or former Finance Board employees may submit requests for access to a record that contains information on the requesting individual and is maintained in a Finance Board designated system of records.

(2) Each such request shall be in writing, shall contain a reasonable, succinct description of the record sought, and shall identify the particular designated system of records in which the record may be maintained, as identified in the "Notice of Systems of Records on Individual Persons

Maintained at the Federal Housing Finance Board" published by the Finance Board from time to time in the **Federal Register**.

(c) *Accounting for previous disclosures.* An individual may use the procedures of this section to request an accounting from the Finance Board of previous disclosures of records pertaining to such individual in a designated system of records, pursuant to the Privacy Act, 5 U.S.C. 552a(c).

(d) *Medical records procedures.* Information on an individual contained in medical records will be disclosed to a requesting individual in accordance with the procedures in paragraph (b) of this section and the requirements of this part, except, if in the judgment of the Finance Board the disclosure of such information could have an adverse effect on the individual, the Finance Board may withhold such information from the individual and transmit it to a licensed medical physician named by the requesting individual.

(e) *Response policy.* The Finance Board will acknowledge, or substantially respond to if practicable, a request made under this section within ten (10) business days of its receipt.

(f) *Initial review.* (1) The Executive Secretary will make the initial determination whether to grant or deny a request for records under this part, after consultation with the systems manager of the appropriate designated system of records.

(2) The Executive Secretary will notify the requesting individual whether the Finance Board:

(i) Has the requested record in a Finance Board designated system of records; and

(ii) Will release the requested record or not.

(3) If the request is denied, the Executive Secretary will inform the requesting individual of the reasons for nondisclosure, and describe the individual's right to appeal the determination.

(g) *Appeal process.* (1) An individual who has been denied a request made pursuant to paragraph (b) of this section, may appeal to the Board of Directors, or designee, within 30 business days of being notified of the denial pursuant to paragraph (f) of this section.

(2) The appeal shall be in writing, shall be mailed or delivered to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or such official designated by the Board of Directors, shall decide on the appeal within 30 business days following

receipt of the appeal by the Executive Secretary. The Board of Directors or designated official may extend the time period for good cause, after giving notice, and reason therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

§ 909.4 Time, place and identification requirements for requests.

(a) *Time.* An individual may hand deliver a written request for access to or amendment of records, made under § 909.3(b) or § 909.6 of this part, to the Finance Board on any business day, between the hours of 8:30 a.m. and 5:30 p.m.

(b) *Place.* All written requests for access to or amendment of records shall be mailed or hand delivered to the Executive Secretary, at the Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

(c) *Identification.*—(1) *Mailed requests.* All requests for access to or amendment of records that are mailed to the Finance Board shall be signed by the individual who is the subject of the requested record and who is making the request. The validity of each such signature shall be attested to by a notary public.

(2) *Hand delivered requests.* All requests for access to or amendment of records that are hand delivered to the Finance Board by the requesting individual shall be authenticated as to the identity of the requesting individual by two forms of identification with photographs, or by one such form of identification and a birth certificate.

§ 909.5 Disclosure of requested record.

(a) *Requesting individual.* Upon a request made pursuant to § 909.3(b) of this part, the Finance Board will disclose a record to the requesting individual, except when the record has been compiled in reasonable anticipation of a civil action or proceedings, in either of the following methods at the option of the requesting individual:

(1) By mailing a copy of the record to the address of the requesting individual; or

(2) By making the record available for inspection and copying by the requesting individual, as soon as practicable, at the offices of the Executive Secretary on regular business days, from 9:30 a.m. until 4:30 p.m. The

requesting individual may choose to be accompanied by another person during the inspection and copying by submitting a signed statement authorizing the presence of such person.

(b) *Other individuals.* (1) The Finance Board will disclose a record to a person or entity other than the requesting individual, in the manner provided by paragraph (a) of this section, only when the Finance Board:

(i) Receives a copy of a written authorization for disclosure to such person or entity signed by the requesting individual and attested to by a notary public; and

(ii) Receives adequate identification from such person or entity.

(2) The restrictions contained in paragraph (b)(1) of this section on disclosure of a record shall not apply to:

(i) A disclosure to Finance Board officers or employees who have a need for the record in the performance of their duties;

(ii) A disclosure otherwise required by the Freedom of Information Act (5 U.S.C. 552);

(iii) A routine use listed with respect to a designated system of records;

(iv) A disclosure to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(v) A disclosure to a recipient who has provided the Finance Board with advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) A disclosure to the National Archives and Records Administration as a record with sufficient historical or other value to warrant its continued preservation by the Federal Government or for evaluation by the Archivist of the United States to determine whether it has such value.

(vii) A disclosure to another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity authorized by law if the head of such agency or instrumentality has made a written request to the Finance Board specifying the particular record requested and the law enforcement activity for which it is sought;

(viii) A disclosure to any person pursuant to a showing of compelling circumstances affecting the health and safety of an individual if notification of the disclosure is transmitted to the last known address of the individual who is the subject of the disclosed record;

(ix) A disclosure to a joint committee of Congress, or any subcommittee thereof, or to either House of Congress, or to any committee or joint committee, or subcommittee thereof, but only to the extent of matter within such joint committee's, committee's or subcommittee's jurisdiction; or

(x) A disclosure to the Comptroller General, or authorized representative, made in the course of performing the duties of the General Accounting Office.

(c) *Notification.* (1) The notification procedures described in this paragraph apply to disclosures of records made pursuant to paragraphs (b)(2) (i) through (vi) and (b)(2) (viii), (ix) and (x) of this section. They do not apply in the case of a disclosure made under paragraph (b)(2)(vii) of this section.

(i) The Finance Board will record the date, nature and purpose of each such disclosure, as well as the identity and address of the person or entity receiving the disclosed record;

(ii) The Finance Board will retain the information described in paragraph (c)(1) of this section for the life of the disclosed record, or for at least five years after such disclosure, and will make such information available to the individual named in the record upon request by such individual pursuant to § 909.3(c).

§ 909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.

(a) *Scope.* This section applies only to amendment of records on an individual maintained in a Finance Board system of records used in making a determination about such individual.

(b) *Individual request.* (1) Any individual may request the Finance Board to amend any portion of a record in a designated system of records pertaining to that individual, where such portion of the record is not accurate, relevant, timely or complete.

(2) A request to amend a record pursuant to this section shall be in writing, shall identify the particular designated system of records containing the record which the individual requests to amend and the portion of that record to be amended, and shall describe the reasons for the requested amendment.

(c) *Prior proceeding.* Nothing in this section shall permit a collateral attack upon any matter decided in a prior judicial, quasi-judicial or other proceeding.

(d) *Response policy.* The Finance Board shall acknowledge, or substantially reply to, if practicable, a request for amendment of records under this section.

(e) *initial review.* (1) The Executive Secretary shall acknowledge all requests by individuals for amendment of records. The Executive Secretary shall refer all requests to the appropriate systems manager of the designated system of records containing the record to be reviewed, for disposition of the request within 10 business days of the referral. The systems manager shall promptly review the request and review the record for accuracy, relevance, timeliness, completeness or necessity.

(2) The systems manager will promptly notify the Executive Secretary of a decision whether to amend the record and shall state any reasons for denying the request in any part.

(3) The Executive Secretary will promptly notify the requesting individual of the decision and reasons for any denial, and describe the individual's rights to appeal any denial.

(f) *Appeal process.* (1) An individual who has been denied a request made pursuant to paragraph (b) of this section may appeal to the Board of Directors, or an official designated by the Board of Directors, within 30 business days of being notified of the denial pursuant to paragraph (e)(3) of this section.

(2) The appeal shall be in writing, shall be mailed to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or designated official, shall decide the appeal within 30 business days of its receipt by the Executive Secretary. The Board of Directors or designated official may extend the 30 days limit for good cause, after giving notice, and the reasons therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

(g) *Statement.* (1) Within 30 business days after being denied an appeal pursuant to paragraph (f) of this section, an individual may submit a concise written statement setting forth the individual's reasons for disagreeing with the Finance Board's refusal to amend the record.

(2) Such statement shall be provided to persons or other agencies or entities to whom the record is disclosed.

§ 909.7 Fees.

The Finance Board, upon a request for records disclosable pursuant to these

regulations, shall charge a fee of \$0.10 per page for duplicating, unless:

(a) The Finance Board determines that it shall grant access to the record only by making a copy thereof;

(b) The total fee will not exceed \$2.00; or

(c) The Finance Board determines, in its sole discretion, that a reduction or waiver of the fees is warranted for good cause.

§ 909.8 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) imposes criminal penalties for obtaining Finance Board records on individuals under false pretenses. It provides as follows:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than \$5,000.00.

§ 909.9 Exemptions.

The following system of records are exempt from §§ 909.3, 909.5 and 909.6 of this part:

(a) Investigatory material compiled and maintained in a Finance Board system of records solely for law enforcement purposes. *Provided*, That the Finance Board shall disclose such material to an individual if nondisclosure results in denying to such individual any right, privilege or benefit to which such individual would otherwise be eligible, unless the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

(b) Investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Finance Board employment to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Finance Board under an express promise that the identity of the source would be held in confidence.

(c) Testing or examination material used solely to determine or assess individual qualifications for appointment to employment at the Finance Board, or promotion therein—the disclosure of which would compromise the objectivity or fairness of the testing, evaluation or examining process.

Dated: December 18, 1991.

By the Federal Housing Finance Board

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91-31006 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18, and 122

RIN 1515-AB12

Proposed Customs Regulations Amendments Concerning Use of an Air Waybill As An In-Bond Document

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding specific mention of the availability of using an air waybill as in-bond document. Customs has concluded a successful test program allowing air carriers to forward in-bond shipments using an air waybill as the sole in-bond document. The use of the air waybill for this purpose has facilitated the movement of cargo and the delivery of in-bond freight. Accordingly, it is proposed to make the procedure available on a permanent basis and the regulations would be amended to reflect this.

DATE: Comments must be received on or before February 28, 1992.

ADDRESS: Comments (preferably in triplicate) should be addressed to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ernie Cunningham, Office of Inspection and Control, 202-566-8151.

SUPPLEMENTARY INFORMATION:

Background

In November 1988, Customs commenced a test program allowing air carriers to use the air waybill (AWB) as the sole in-bond document in place of Customs Forms 7512 or 7512-C, or Transit Air Cargo Manifest (TACM) documents. Some documentation is necessary in order for Customs to retain control over unentered merchandise in transit from one port to another. The test was designed to take advantage of the unique AWB number and the detailed information available on an AWB. A number of air carriers have been participating in the test. The use of the AWB has facilitated the movement of cargo and the delivery of in-bond freight.

The AWB test was originally described in Temporary Directive 3240-01, August 31, 1988. That directive expired on September 29, 1989. As a

result of the successful test period, Customs plans to make permanently available the option to use an AWB as the sole in-bond document. The new procedures are fully described in Customs Directive 3240-54, issued March 6, 1990, and that Directive became effective on May 5, 1990.

Under that directive, and in the proposed regulatory amendments, air carriers may forward in-bond shipments from the first port of arrival/unloading using an AWB as the in-bond document and the 11-digit AWB number as the in-bond control number. The first three digits of the number are the issuing airline's identification code. The AWB used must be similar in format to, and record the same information as the universal AWB recognized and accepted by the International Air Transport Association (IATA). The AWB must also contain the final port of destination in the U.S. or the actual ultimate country of destination of the shipment indicated by available airline shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the shipment's ultimate destination.

Importers may opt to use this procedure for merchandise entered for immediate transportation, transportation and exportation, and immediate exportation. Such use does not modify any carrier's liability for in-bond freight and does not modify bond requirements currently in the Customs Regulations. It is still necessary that the delivering carrier, whether or not it is the initial bonded carrier, surrender in the in-bond document as notice of arrival promptly, but no more than two working days after the arrival of any portion of the covered shipment at the port of destination.

District directors will consider individual port factors, such as presence of an operational Manifest Review Unit (MRU), in determining the level of supervision that is necessary in each district.

In regard to any regulatory changes necessary to make permanently available the ability to use the AWB as an in-bond document, § 122.92(a), Customs Regulations (19 CFR 122.92(a)), already states that, "Customs Form 7512 or other Customs approved documents" shall be used for both entry and manifest. The proposed amendments make specific reference to an AWB as one of those Customs approved documents and make other conforming changes.

Comments

Before adopting these proposals, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b). Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m., and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was John E. Doyle, Regulations and Disclosure Law Branch, Office of Regulations and Ruling, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in

19 CFR Part 18

Common Carriers, Exports, Freight forwarders.

19 CFR Part 122

Air carriers, Freight.

Proposed Amendments to the Regulations

It is proposed to amend parts 18 and 122, Customs Regulations (19 CFR parts 18, 122), as set forth below:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general and relevant specific authority citations for part 18 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624;

§ § 18.11 and 18.12 also issued under 19 U.S.C. 1484;

2. It is proposed to amend § 18.11 by revising the first sentence of paragraph (h) to read as follows:

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

(h) Either Customs Form 7512, a carnet, or an air waybill (see § 122.92 of this chapter), shall be used as a combined transportation entry, invoice, and manifest.* * *

3. It is proposed to amend § 18.20 by revising the first sentence of paragraph (a) to read as follows:

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation and exportation, except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the U.S. between two points in contiguous foreign territory), a carnet, three copies of an air waybill (see § 122.92 of this chapter), or four copies of Customs Form 7512 shall be required.* * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1524, 1644, 49 U.S.C. App. 1509.

2. It is proposed to amend § 122.92 by revising the heading and first sentence of paragraph (a)(1), adding a paragraph (a)(3), and by adding a sentence to paragraph (b)(1) to read as follows:

§ 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512 or other document.* Customs Form 7512 or other approved documents, such as an air waybill (see paragraph (a)(3) of this section), shall be used for both entry and manifest.* * *

(3) *Air Waybill.* An air waybill may be used for both entry and manifest. Three copies of the air waybill are required unless the district director deems additional copies necessary. Photocopies of the original air waybill are acceptable. Either preprinted stock air waybills or electronically generated air waybills may be used. The air waybill must:

(i) Be in the format, and contain the information required of a universal air waybill as recognized and accepted by

the International Air Transport Association (IATA), be legible and in the English language;

(ii) Display a unique 11-digit number, the first three digits being the air carrier's identification code;

(iii) Display the number of packages based on the smallest external packaging unit (e.g., 14 packages is acceptable, 1 pallet is unacceptable);

(iv) Display the name of the final port of destination in the U.S. or the name of the ultimate country of destination of the cargo indicated by available air carrier shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the cargo's final destination;

(v) Be modified to contain the following information which should appear in a block or attachment in the upper right-hand corner as in this example. The numbers 1-8 correspond to the descriptions that follow; the numbers do not have to appear on the AWB;

(1) _____
Origin
(2) _____
Entry Type
(3) _____
Destination
(4) _____
Importing Carrier/Flight Number/Arrival Date
(5) _____
Bonded Carrier/Exporter
(6) _____
Date
(7) _____
Signature of Carrier's Agent (or Exporter)
(8) _____
Customs Officer Date

The item numbers correspond to the following information:

Item 1—Origin—The numeric district/port code is listed in Schedule D of the Harmonized Tariff Schedules of the United States, of the port where the in-bond entry is presented.

Item 2—Entry type—The appropriate in-bond code number such as I.T./61 for Immediate Transportation, T&E/62 for Transportation and Exportation, and I.E./63 for Immediate Exportation.

Item 3—Destination—The numeric district/port code for the intended port of destination for entry or exportation.

Item 4—Importing Carrier/Flight Number/Arrival Date—This information serves to identify the shipment in terms of the inward foreign manifest of the importing carrier. The "Arrival Date" is the date of arrival of the importing conveyance in the U.S. This information must be supplied in all instances.

Item 5—Bonded Carrier/Exporter—The bonded carrier or exporter who will be liable for the proper movement, handling, and safekeeping of the merchandise once the in-bond movement is authorized by Customs. If this information is not supplied, the in-bond movement will be carried out under the bond

of the importing carrier (See Item 7 for further information on transfer of liability)

Item 6—Date—The date of the in-bond entry preparation. Since an in-bond entry can be prepared before the date of entry presentation and/or acceptance, and prior to the actual arrival of the importing conveyance, this date should only be used for duty assessment purposes when the date in Item 8 is left blank. If a date is not present, the date of in-bond preparation will be deemed to be the date of arrival.

Item 7—Signature of Carrier's Agent (or Exporter)—This signature of the authorized agent of the bonded carrier or exporter identified previously (See Item 5) constitutes acceptance of the liability for the in-bond shipment by the party signing. A signature is required except when the in-bond movement is under the bond of the importing carrier. If unsigned, the submission to Customs of an AWB requesting such a movement is evidence of the acceptance of liability if the AWB is approved by Customs.

Item 8—Customs Officer/Date—Signature of the Customs Officer who authorizes the initiation of the in-bond movement and the date of such authorization. Customs will check to make sure merchandise is released only to a bonded carrier. The date is used to start the time limit for completion of the in-bond movement and for consumption entry purposes in accord with § 141.69(b) of this chapter. Customs authorization procedures which use a perforation device are acceptable in lieu of the appropriate Customs signature. The district director will determine whether a signature will be required in this block prior to the time that the cargo is allowed to move.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisal*. When merchandise is entered for immediate transportation without appraisal, two copies of Customs Form 7512 or other Customs approved document, and the duplicate copy of Customs Form 7512-C shall be delivered to the carrier. When an airway bill is used, Customs Form 7512-C is not required.

* * * * *

Michael H. Lane,

(Acting) Commissioner of Customs.

Approved: December 20, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-31085 Filed 12-27-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-097-91]

RIN 1545-AQ22

Certification of Enhanced Oil Recovery Projects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the certification of enhanced oil recovery projects. The temporary regulations provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that the project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing must be received by March 24, 1992. The public hearing is scheduled to be held on April 7, 1992, beginning at 10 a.m..

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-097-91), room 5228, Washington, DC 20044. The hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brenda M. Stewart, (202) 566-4919 (not a toll-free number); concerning the hearing, Robert R. Boyer, (202) 377-9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirement should be sent to the Office of Management and Budget, Attention:

Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirement in these regulations is in §§ 1.43-3T(a)(3) and (b)(3). This information is required by the Internal Revenue Service pursuant to section 43(c)(2)(B). This information will be used to verify that a project undertaken by a taxpayer is and continues to be a qualified enhanced oil recovery project. The taxpayers affected are operators or designated owners of enhanced oil recovery projects.

The following estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1,460 hours.

The estimated average annual burden associated with the collection of information requirement under § 1.43-3T(a)(3) is 72 hours per respondent. The estimated average annual burden associated with the collection of information requirement under § 1.43-3T(b)(3) is 1 hour per respondent.

Estimated total number of respondents: 20.

Estimated annual frequency of responses: 1.

Background

The temporary regulations published in the rules and regulations portion of this issue of the *Federal Register* add new § 1.43-3T to the Income Tax Regulations (26 CFR part 1). The temporary regulations provide procedures whereby an operator of an enhanced oil recovery project certifies to the Internal Revenue Service that the project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the new temporary regulations serves as the comment document for this notice of proposed rulemaking.

For the text of the temporary regulations see T.D. 8384 published in the rules and regulations portion of this issue of the *Federal Register*.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis

is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for Tuesday, April 7, 1992. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Written comments, requests to appear, and outlines of oral comments must be received by March 24, 1992.

Hearing Information

The subject of the hearing is proposed regulations under section 43(c)(2)(B) of the Internal Revenue Code. The temporary regulations appear elsewhere in this issue of the *Federal Register*.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the temporary regulations should submit not later than Tuesday, March 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying.

Copies of the agenda will be available free of charge at the hearing.

Drafting information

The principal author of these regulations is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.37-1 through 1.44A-4

Credits, income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations, T.D. 8384, published in the Rules and Regulations portion of this issue of the *Federal Register*, are hereby also proposed as final regulations under section 43(c)(2)(B) of the Internal Revenue Code. Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91-30874 Filed 12-27-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[PS-101-90]

RIN 1545-AP64

Enhanced Oil Recovery Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides proposed regulations relating to the enhanced oil recovery credit for certain costs that are paid or incurred in connection with a qualified enhanced oil recovery project. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990. These regulations provide the public with guidance in determining the costs that are subject to the credit and the circumstances under which the credit is available.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing must be received by March 24, 1992. The public hearing is scheduled to be held on April 7, 1992, at 10 a.m..

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box

7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-101-90), Room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brenda M. Stewart, (202) 566-4919 (not a toll-free number); concerning the hearing, Robert R. Boyer, (202) 377-9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on this requirement should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information requirement in these regulations is in § 1.43-7. This information is required by the Internal Revenue Service to verify that a taxpayer has elected to apply the provisions of §§ 1.43-1, 1.43-2, 1.43-4, 1.43-5, and 1.43-6 for costs paid or incurred in connection with an enhanced oil recovery project for which first injection of liquids, gases, or other matter occurs after December 31, 1990.

The following estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

Estimated total reporting burden: 5 hours.

The estimated average burden associated with the collection of information in this notice of proposed rulemaking is .25 hours per recordkeeper.

Estimated number of respondents: 20.

Estimated frequency of responses: 1 time only.

Background

The proposed regulations implement section 43 of the Internal Revenue Code, which was enacted by section 11511 of

the Omnibus Reconciliation Act of 1990, Public Law 101-508.

Explanation of Provisions

I. General

Section 43 of the Internal Revenue Code, enacted by the Omnibus Budget Reconciliation Act of 1990, provides a tax credit for projects employing enhanced oil recovery methods. Enhanced oil recovery methods, also referred to as tertiary recovery methods, are generally applied to increase or maintain production from mature oil fields. The proposed regulations provide guidance concerning the circumstances under which the section 43 credit is available. Section 1.43-3T, relating to certification requirements, is also issued as a temporary regulation.

The section 43 credit is an amount equal to 15 percent of the qualified enhanced oil recovery costs paid or incurred by a taxpayer in connection with a qualified enhanced oil recovery project. The proposed regulations provide that only taxpayers with operating interests in a property may claim the section 43 credit. Section 1.43-1(a). This rule is needed to prevent the credit from being claimed twice with respect to the same asset. For example, in the absence of this provision, an investor who does not hold an operating mineral interest could claim the credit on an asset used to produce a tertiary injectant, and the holder of the operating mineral interest could claim the credit on the cost of the injectant purchased from the investor.

Under section 43(b), the credit is reduced if oil prices exceed \$28 and is eliminated if oil prices exceed \$34, with both price levels adjusted for inflation. Section 1.43-1(c)(3) provides examples illustrating the phase-out and the inflation adjustment.

II. Qualified Enhanced Oil Recovery Costs

The section 43 credit base consists of tangible property costs, intangible drilling and development costs, and tertiary injectant expenses. The proposed regulations provide that tangible property costs are included in the credit base in the taxable year in which the property is placed in service for depreciation purposes, intangible drilling and development costs are included in the credit base in the taxable year in which deductible under section 263(c) (ignoring section 291), and tertiary injectant expenses are included in the credit base in the taxable year in which deductible under section 193.

As a general rule, the proposed regulations provide that an amount may

be included in the credit base only if it is paid or incurred with respect to an asset which is used for the primary purpose of implementing a qualified enhanced oil recovery project. For example, intangible drilling and development costs incurred to drill a well that is used for primary production do not qualify as section 43 costs even if it is anticipated that the well may be used in connection with a tertiary recovery method in the future. Similarly, costs incurred in connection with the acquisition, construction, transportation, erection, or installation of an offshore drilling platform do not constitute qualified enhanced oil recovery costs unless the offshore platform is used for the primary purpose of implementing a qualified enhanced oil recovery project.

Costs paid or incurred for tangible property are included in the credit base only if the property is an integral part of a qualified enhanced oil recovery project. The proposed regulations provide that property is an integral part of a project if it is used directly in a tertiary recovery method and is essential to the completeness of the method. The regulations provide examples illustrating the types of property that constitute an integral part of a project. The Internal Revenue Service solicits suggestions of other types of property commonly used in enhanced oil recovery projects that should be the subject of additional examples.

The proposed regulations require an allocation of costs if tangible property is used partly for qualifying and partly for nonqualifying use. For example, the cost of a steam generator is allocated under this rule if the generator provides steam for both a qualified enhanced oil recovery project and an enhanced oil recovery project that is not a qualified project. Cost are allocated under this rule only if the asset with respect to which the costs are paid or incurred is used for the primary purpose of implementing a qualified enhanced oil recovery project.

The proposed regulations provide that costs paid or incurred prior to the date of the first injection of liquids, gases, or other matter (as defined in § 1.43-2(c)) may be qualified enhanced oil recovery costs; however, the credit may be claimed only after the first injection occurs. Therefore, if first injection occurs on or before the date a taxpayer files a federal income tax return for the taxable year for which the costs are included in the credit base, the costs may be taken into account on that return. If first injection occurs after that return is filed, the costs may be taken

into account on an amended return. In no event, however, may costs be taken into account if the first injection occurs more than 36 months after the close of the taxable year in which the costs are paid or incurred.

The proposed regulations also provide that a purchaser of an existing qualified enhanced oil recovery project may claim the credit for any section 43 costs in excess of the acquisition cost. However, costs paid or incurred to acquire an existing qualified enhanced oil recovery project (or an interest in an existing qualified enhanced oil recovery project) are not eligible for the credit. Section 1.43-4(e)(2). Without this rule, the absence of a recapture provision under section 43 would facilitate duplication of the credit and might encourage churning of projects.

The proposed regulations further provide that costs paid or incurred for an asset that is acquired, used, or transferred in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit are not qualified enhanced oil recovery costs. This rule applies regardless of whether the costs would otherwise be creditable for a single taxpayer or more than one taxpayer. This rule is needed to ensure that taxpayers cannot claim the credit more than once with respect to an asset. The proposed regulations provide a number of examples of this anti-abuse rule.

III. Qualified Enhanced Oil Recovery Project

Section 43(c)(2)(A) provides that a qualified enhanced oil recovery project must employ a tertiary recovery method specified in section 193(b)(3). Section 193(b)(3)(A) specifies nine tertiary recovery methods by cross-reference to regulations issued by the Energy Department in June 1979, as modified by the now-repealed section 4996(b)(8)(C) (relating to the crude oil windfall profit tax). Section 1.43-2(e)(2) of the proposed regulations restates the definitions of the nine methods, with modifications in certain cases. These modifications are generally minor and are intended to improve the accuracy of the definitions. The only significant modification is to the definition of a polymer augmented waterflood: section 1.43-2(e)(2)(v) provides that a qualified tertiary recovery method does not include the injection of polymers for the purpose of modifying the injection profile of the wellbore, rather than for modifying the water-oil mobility ratio. See H.R. Rep. No. 964, 101st Cong., 2d Sess. 1125 (1990) (Conference Report). Pursuant to section 43(c)(4), the proposed regulations also provide that, in addition to the restated

nine methods, immiscible nonhydrocarbon gas displacement is a qualified tertiary recovery method. Section 1.43-2(e)(2)(x).

The Secretary is authorized to approve other methods as qualifying tertiary recovery methods. See Conference Report at 1125. The proposed regulations, however, do not expand the list of qualifying methods. Submissions made to the Internal Revenue Service during the drafting of these regulations have suggested that a variety of other types of oil discovery and recovery methods should be treated as qualifying methods under section 43. A number of these suggested methods are drilling methods (e.g., horizontal drilling), or improved discovery or geologic surveying techniques (e.g., three dimensional seismic surveying). There is no indication that Congress intended the credit to be available for drilling or exploration techniques. Other suggested methods do not appear to be in commercial use at the present time (e.g., injection of genetically engineered microbes). The Internal Revenue Service may add to the list of qualifying methods when a tertiary method becomes available for commercial use, including use in a pilot or experimental project. It is anticipated that any new method will be approved by revenue ruling.

Section 43(c)(2)(A) provides that a qualified enhanced oil recovery project must reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered. The proposed regulations do not define "more than an insignificant increase." Whether a project satisfies this standard is determined under all the facts and circumstances.

Under section 43(c)(2)(A)(iii), the credit is allowable only for projects with respect to which "the first injection of liquids, gases, or other matter" occurs after December 31, 1990. The proposed regulations define the first injection of liquids, gases, or other matter as the first injection of a tertiary injectant into the reservoir. Therefore, injections for the purpose of "pretreating" or "preflushing" the reservoir and test or experimental injections do not constitute a first injection for this purpose.

The legislative history provides that a significant expansion of a project is to be treated as a new project and states that a project is considered significantly expanded if it affects acreage substantially unaffected by the project's previously implemented tertiary activities. 101 Cong. Rec. S15675

(October 18, 1990). Section 1.43-2(d)(1)(i) incorporates this rule. The Secretary is permitted to expand the category of significant expansion by regulation. *Id.* Pursuant to this grant of authority, the proposed regulations treat two additional types of expansions as significant expansions. First, the expansion of a project to a reservoir previously unaffected by the project constitutes a significant expansion. For example, the application of a tertiary recovery method to a reservoir at 4,000 feet constitutes a separate project from a previous tertiary recovery project on the same acreage in a separate reservoir at 10,000 feet. Second, a project affecting a reservoir that was previously affected by a tertiary recovery method constitutes a significant expansion if the prior method has been terminated for at least 36 months. Neither a change in tertiary recovery method nor a more intensive application of a method constitutes a significant expansion.

IV. Election Not to Apply Section 43

The proposed regulations provide guidance concerning the election not to apply section 43 for a taxable year. Section 1.43-6. The proposed regulations provide that in the case of a partnership or S corporation, this election is made at the entity level.

IV. Effective Date

The regulations are proposed to apply to costs paid or incurred after December 31, 1991, in connection with a qualified enhanced oil recovery project. In addition, taxpayers may elect to apply the regulations for taxable years beginning after December 31, 1990, with respect to costs paid or incurred in connection with a qualified enhanced oil recovery project.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled for Tuesday, April 7, 1992, at 10 a.m. Written comments, requests to appear, and outlines of oral comments must be received by March 24, 1992. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Written comments, requests to appear, and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-101-90), room 5228, Washington, DC 20044.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in this notice of proposed rulemaking and who desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, March 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.28-0 through 1.44A-4

Credits, Drugs, Income taxes. Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to Regulations

Accordingly, title 26, chapter 1 parts 1 and 602, are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.43-0 through 1.43-2 and 1.43-4 through 1.43-7 also issued under section 26 U.S.C. 43

§§ 1.43-1 and 1.43-2 [Redesignated as §§ 1.32-1 and 1.32-2]

Par. 2. Sections 1.43-1 and 1.43-2 are redesignated as §§ 1.32-1 and 1.32-2.

Par. 3. New §§ 1.43-0 through 1.43-2, 1.43-4, 1.43-6 and 1.43-7 are added and §§ 1.43-3 and 1.43-5 are added and reserved to read as follows:

§ 1.43-0 Table of contents.

This section lists the captions contained in §§ 1.43-0 through 1.43-7.

§ 1.43-0 Table of contents.

§ 1.43-1 The enhanced oil recovery credit—general rules.

- (a) Claiming the credit.
 - (1) In general.
 - (2) Examples.
- (b) Amount of the credit.
- (c) Phase-out of the credit as crude oil prices increase.
 - (1) In general.
 - (2) Inflation adjustment.
 - (3) Examples.
 - (d) Reduction of associated deductions.
 - (1) In general.
 - (2) Certain deductions by an integrated oil company.
 - (e) Basis adjustment.
 - (f) Passthrough entity basis adjustment.
 - (1) Partners' interests in a partnership.
 - (2) Shareholders' stock in an S corporation.
 - (g) Examples.

§ 1.43-2 Qualified enhanced oil recovery project.

- (a) Qualified enhanced oil recovery project.
 - (b) More than insignificant increase.
 - (c) First injection of liquids, gases, or other matter.
 - (1) In general.
 - (2) Example.
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 - (1) In general.
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- (e) Qualified tertiary recovery methods
 - (1) In general.
 - (2) Tertiary recovery methods that qualify
 - (3) Recovery methods that do not qualify

§ 1.43-3 Certification. [Reserved]

§ 1.43-4 Qualified enhanced oil recovery costs.

- (a) Qualifying costs—in general.
- (b) Costs defined.
 - (1) Qualified tertiary injectant expenses
 - (2) Intangible drilling and developments costs.
 - (3) Tangible property costs.
 - (4) Examples.
 - (c) Primary purpose.
 - (1) In general.
 - (2) Tertiary injectant costs.
 - (3) Intangible drilling and development costs.
 - (4) Tangible property costs.
 - (5) Offshore drilling platforms.
 - (6) Examples.
 - (d) Costs paid or incurred prior to first injection.
 - (1) In general.
 - (2) First injection more than 36 months after close of taxable year costs are paid or incurred.
 - (3) Examples.
 - (e) Other rules.
 - (1) Anti-abuse rule.
 - (2) Costs paid or incurred to acquire a project.
 - (3) Examples.

§ 1.43-5 At-risk limitation. [Reserved]

§ 1.43-6 Election out of section 43.

- (a) Election to have the credit not apply.
 - (1) In general.
 - (2) Time for making the election.
 - (3) Manner of making the election.
- (b) Election by partnerships and S corporations.

§ 1.43-7 Effective date of regulations.

- (a) In general.
- (b) Election.
 - (1) In general.
 - (2) Time and manner of election.

§ 1.43-1 The enhanced oil recovery credit—general rules.

(a) *Claiming the credit—In general.* The enhanced oil recovery credit (the "credit") is a component of the section 38 general business credit. A taxpayer that owns an operating mineral interest (as defined in § 1.614-2(b)) in a property may claim the credit for qualified enhanced oil recovery costs (as described in § 1.43-4) paid or incurred by the taxpayer in connection with a qualified enhanced oil recovery project (as described in § 1.43-2) undertaken with respect to the property. A taxpayer that does not own an operating mineral interest in a property may not claim the credit. To the extent a credit included in the current year business credit under section 38(b) is unused under section 38, the credit is carried back or forward under the section 39 business credit carryback and carryforward rules.

(2) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Credit for operating mineral interest owner. In 1992, A, the owner of an operating mineral interest in a property, begins a qualified enhanced oil recovery project using cyclic steam. B, who owns no interest in the property, purchases and places in service a steam generator. B sells A steam, which A uses as a tertiary injectant described in section 193. Because A owns an operating mineral interest in the property with respect to which the project is undertaken, A may claim a credit for the cost of the steam. Although B owns the steam generator used to produce steam for the project, B may not claim a credit for B's costs because B does not own an operating mineral interest in the property.

Example 2. Credit for operating mineral interest owner. C and D are partners in CD, a partnership that owns an operating mineral interest in a property. In 1992, CD begins a qualified enhanced oil recovery project using cyclic steam. D purchases a steam generator and sells steam to CD. Because CD owns an operating mineral interest in the property with respect to which the project is undertaken, CD may claim a credit for the cost of the steam. Although D owns the steam generator used to produce steam for the project, D may not claim a credit for the cost of the steam generator because D paid these costs in a capacity other than that of an operating mineral interest owner. This result would not differ if C and D had elected under section 761 to be excluded from the application of all or part of subchapter K.

(b) **Amount of the credit.** A taxpayer's credit is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for the taxable year, reduced by the phase-out amount, if any, determined under paragraph (c) of this section.

(c) **Phase-out of the credit as crude oil prices increase—(1) In general.** The amount of the credit (determined without regard to this paragraph (c)) for any taxable year is reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph (c)) as—

(i) The amount by which the reference price determined under section 29(d)(2)(C) for the calendar year immediately preceding the calendar year in which the taxable year begins exceeds \$28 (as adjusted under paragraph (c)(2) of this section), bears to

(ii) \$6.

(2) **Inflation adjustment—(i) In general.** For any taxable year beginning in a calendar year after 1991, an amount equal to \$28 multiplied by the inflation adjustment factor is substituted for the \$28 amount under paragraph (c)(1)(i) of this section.

(ii) **Inflation adjustment factor.** For purposes of this paragraph (c), the inflation adjustment factor for any calendar year is a fraction, the numerator of which is the GNP implicit price deflator for the preceding calendar

year and the denominator of which is the GNP implicit price deflator for 1990. The "GNP implicit price deflator" is the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the inflation adjustment factor for the preceding calendar year will be published.

(3) **Examples.** The following examples illustrate the principles of this paragraph (c).

Example 1. Reference price exceeds \$28. In 1992, E, the owner of an operating mineral interest in a property, incurs \$100 of qualified enhanced oil recovery costs. The reference price for 1991 determined under section 29(d)(2)(C) is \$30 and the inflation adjustment factor for 1992 is 1. E's credit for 1992 determined without regard to the phase-out for crude oil price increases is \$15 ($\$100 \times 15\%$). In determining E's credit, the credit is reduced by \$5 ($\$15 \times (\$30 - (\$28 \times 1)) / 6$). Accordingly, E's credit for 1992 is \$10 ($\$15 - \5).

Example 2. Inflation adjustment. In 1993, F, the owner of an operating mineral interest in a property, incurs \$100 of qualified enhanced oil recovery costs. The 1992 reference price is \$34, and the 1993 inflation adjustment factor is 1.10. F's credit for 1993 determined without regard to the phase-out for crude oil price increases is \$15 ($\$100 \times 15\%$). In determining F's credit, \$30.80 ($1.10 \times \28) is substituted for \$28, and the credit is reduced by \$8 ($\$15 \times (\$34 - \$30.80) / 6$). Accordingly, F's credit for 1993 is \$7 ($\$15 - \8).

(d) **Reduction of associated deductions—(1) In general.** Any deduction allowable under chapter 1 for an expenditure taken into account in computing the amount of the credit determined under paragraph (b) of this section is reduced by the amount of the credit attributable to the expenditure.

(2) **Certain deductions by an integrated oil company.** For purposes of determining the intangible drilling and development costs that an integrated oil company must capitalize under section 291(b), the amount allowable as a deduction under section 263(c) is the deduction allowable after paragraph (d)(1) of this section is applied. See § 1.43-4(b)(2) (extent to which integrated oil company intangible drilling and development costs are qualified enhanced oil recovery costs).

(e) **Basis adjustment.** For purposes of subtitle A, the increase in the basis of property which would (but for this paragraph (e)) result from an expenditure with respect to the property is reduced by the amount of the credit determined under paragraph (b) of this section attributable to the expenditure.

(f) **Passthrough entity basis adjustment—(1) Partners' interests in a partnership.** To the extent a partnership expenditure is not deductible under

paragraph (d)(1) of this section or does not increase the basis of property under paragraph (e) of this section, the expenditure is treated as an expenditure described in section 705(a)(2)(B) (concerning decreases to basis of partnership interests). Thus, the adjusted bases of the partners' interests in the partnership are decreased (but not below zero).

(2) **Shareholders' stock in an S corporation.** To the extent an S corporation expenditure is not deductible under paragraph (d)(1) of this section or does not increase the basis of property under paragraph (e) of this section, the expenditure is treated as an expenditure described in section 1367(a)(2)(D) (concerning decreases to basis of S corporation stock). Thus, the bases of the shareholders' S corporation stock are decreased (but not below zero).

(g) **Examples.** The following examples illustrate the principles of paragraphs (d) through (f) of this section.

Example 1. Deductions reduced for credit amount. In 1992, G, the owner of an operating mineral interest in a property, incurs \$100 of intangible drilling and development costs in connection with a qualified enhanced oil recovery project undertaken with respect to the property. G elects under section 263(c) to deduct these intangible drilling and development costs under section 263(c). The amount of the credit determined under paragraph (b) of this section attributable to the \$100 of intangible drilling and development costs is \$15 ($\$100 \times 15\%$). Therefore, G's otherwise allowable deduction of \$100 for the intangible drilling and development costs is reduced by \$15. Accordingly, in 1992, G may deduct under section 263(c) only \$85 ($\$100 - \15) for these costs.

Example 2. Integrated oil company deduction reduced. The facts are the same as in Example 1, except that G is an integrated oil company. As in Example 1, the amount of the credit determined under paragraph (b) of this section attributable to the \$100 of intangible drilling and development costs is \$15, and G's allowable deduction under section 263(c) is \$85. Because G is an integrated oil company, G must capitalize \$25.50 ($\$85 \times 30\%$) under section 291(b). Therefore, in 1992, G may deduct under section 263(c) only \$59.50 ($\$85 - \25.50) for these intangible drilling and development costs.

Example 3. Basis of property reduced. In 1992, H, the owner of an operating mineral interest in a property, pays \$100 to purchase tangible property that is an integral part of a qualified enhanced oil recovery project undertaken with respect to the property. The amount of the credit determined under paragraph (b) of this section attributable to the \$100 is \$15 ($\$100 \times 15\%$). Therefore, for purposes of subtitle A, H's basis in the tangible property is \$85 ($\$100 - \15).

Example 4. Basis of interest in passthrough entity reduced. In 1992, I is a 50% partner in

If, a partnership that owns an operating mineral interest in a property. If pays \$200 to purchase tangible property that is an integral part of a qualified enhanced oil recovery project undertaken with respect to the property. The amount of the credit determined under paragraph (b) of this section attributable to the \$200 is \$30 ($\$200 \times 15\%$). Therefore, for purposes of subtitle A, If's basis in the tangible property is \$170 ($\$200 - \30). Under paragraph (f) of this section, the amount of the purchase price that does not increase the basis of the property (\$30) is treated as an expenditure described in section 705(a)(2)(B). Therefore, If's basis in the partnership interest is reduced by \$15 (If's allocable share of the section 705(a)(2)(B) expenditure ($\$30 \times 50\%$)).

§ 1.43-2 Qualified enhanced oil recovery project.

(a) *Qualified enhanced oil recovery project.* A "qualified enhanced oil recovery project" is any project that meets all of the following requirements—

(1) The project involves the application (in accordance with sound engineering principles) of one or more qualified tertiary recovery methods (as described in paragraph (e) of this section) that is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered;

(2) The project is located within the United States (within the meaning of section 638(1));

(3) The first injection of liquids, gases, or other matter for the project (as described in paragraph (c) of this section) occurs after December 31, 1990; and

(4) The project is certified under § 1.43-3T.

(b) *More than insignificant increase.* For purposes of paragraph (a)(1) of this section, all the facts and circumstances determine whether the application of a tertiary recovery method can reasonably be expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered. Certain information submitted as part of a project certification is relevant to this determination. See § 1.43-3T(a)(3)(i)(D). In no event is the application of a recovery method that merely accelerates the recovery of crude oil considered an application of one or more qualified tertiary recovery methods that can reasonably be expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered.

(c) *First injection of liquids, gases, or other matter—*(1) *In general.* The "first injection of liquids, gases, or other matter" generally occurs on the date a tertiary injectant is first injected into the

reservoir. The "first injection of liquids, gases, or other matter" does not include—

(i) The injection into the reservoir of any liquids, gases, or other matter for the purpose of pretreating or preflushing the reservoir to enhance the efficiency of the tertiary recovery method or

(ii) Test or experimental injections.

(2) *Example.* The following example illustrates the principles of this paragraph (c).

Example. Injections to pretreat the reservoir. In 1989, A, the owner of an operating mineral interest in a property, began injecting water into the reservoir for the purpose of elevating reservoir pressure to obtain miscibility pressure to prepare for the injection of miscible gas in connection with an enhanced oil recovery project. In 1992, A obtains miscibility pressure in the reservoir and begins injecting miscible gas into the reservoir. The injection of miscible gas, rather than the injection of water, is the first injection of liquids, gases, or other matter into the reservoir for purposes of determining whether the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(d) *Significant expansion exception—*

(1) *In general.* If a project for which the first injection of liquids, gases, or other matter (within the meaning of paragraph (c)(1) of this section) occurred before January 1, 1991, is significantly expanded after December 31, 1990, the expansion is treated as a separate project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990. A project is considered significantly expanded only if—

(i) The injection of liquids, gases, or other matter after December 31, 1990, is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered from acreage that was substantially unaffected by the injection of liquids, gases, or other matter before January 1, 1991;

(ii) The injection of liquids, gases, or other matter after December 31, 1990, is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered from a reservoir that was unaffected by the injection of liquids, gases, or other matter before January 1, 1991; or

(iii) Each qualified tertiary recovery method implemented in a project prior to January 1, 1991, terminated more than 36 months before implementing an enhanced oil recovery project that commences after December 31, 1990. For purposes of section 43, a qualified tertiary recovery method terminates at the point in time when the method no longer results in more than an

insignificant increase in the amount of crude oil that ultimately will be recovered. All the facts and circumstances determine whether a tertiary recovery method has terminated. Among the factors considered is the project plan, the unit plan of development, or other similar plan. A tertiary recovery method is not necessarily terminated merely because the injection of the tertiary injectant has ceased. For purposes of this paragraph (d)(1), a project is implemented when costs that will be taken into account in determining the credit with respect to the project are paid or incurred.

(2) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. Substantially unaffected acreage. In January 1988, A, the owner of an operating mineral interest in a property, began injecting steam into the reservoir in connection with a cyclic steam enhanced oil recovery project. The project affected only a portion of the acreage. In 1992, A begins cyclic steam injections with respect to acreage that was substantially unaffected by the previous cyclic steam project. Because the injection of steam into the reservoir in 1992 affects acreage that was substantially unaffected by the previous project, the cyclic steam injection in 1992 is treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 2. Previously unaffected reservoir. In 1989, B, the owner of an operating mineral interest in a property, implemented a steam drive project on the property. B injected steam into the reservoir at a depth of 1,000 feet. B continued injecting steam at 1,000 feet until 1992, when B began injecting steam at 2,000 feet. The injection of steam at 2,000 feet affects a reservoir that was unaffected by the injection of steam at 1,000 feet. Because the injection of steam at 2,000 feet affects a reservoir that was unaffected by the injection of steam at 1,000 feet, the injection of steam at 2,000 feet is treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 3. Tertiary recovery method terminated more than 36 months. In 1982, B, the owner of an operating mineral interest in a property, implemented a tertiary recovery project using cyclic steam injection as a method for the recovery of crude oil. The project was certified as a tertiary recovery project for purposes of the windfall profit tax. In May 1988, the application of the cyclic steam tertiary recovery method terminated. In July 1992, B begins drilling injection wells as part of a project to apply the steam drive tertiary recovery method with respect to the same project area affected by the cyclic steam method. B begins cyclic steam injections in September 1992. Because B commences an enhanced oil recovery project more than 36 months after the previous tertiary recovery method was terminated, the

project is treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 4. Change in tertiary recovery method. In 1984, C, the owner of an operating mineral interest in a property, implemented a tertiary recovery project using cyclic steam as a method for the recovery of crude oil. The project was certified as a tertiary recovery project for purposes of the windfall profit tax. C continued the cyclic steam injection until 1992, when the tertiary recovery method was changed from cyclic steam injection to steam drive. The steam drive affects the same reservoir that was affected by the cyclic steam. Because the steam drive does not affect acreage or a reservoir that was unaffected by the cyclic steam nor was the cyclic steam terminated for more than 36 months before the steam drive was implemented, the steam drive is not a significant expansion. Therefore, the steam drive is not treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 5. Change in tertiary recovery method. In 1988, D, the owner of an operating mineral interest in a property, undertook an immiscible nitrogen enhanced oil recovery project that resulted in more than an insignificant increase in the ultimate recovery of crude oil from the property. D continued the immiscible nitrogen project until 1992, when the project was converted from immiscible nitrogen displacement to miscible nitrogen displacement by increasing the injection of nitrogen to increase reservoir pressure. The miscible nitrogen displacement affects the same acreage and the same reservoir that was affected by the immiscible nitrogen displacement. Because the miscible nitrogen displacement does not affect acreage or a reservoir that was unaffected by the immiscible nitrogen displacement nor was the immiscible nitrogen displacement terminated for more than 36 months before the miscible nitrogen displacement was implemented, the miscible nitrogen displacement is not a significant expansion. Therefore, the miscible nitrogen displacement is not treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 6. Change in injection pattern. In 1988, E, the owner of an operating mineral interest in a property, undertook a steam drive enhanced oil recovery project with respect to the property. E drilled injection wells in a five spot pattern for purposes of injecting steam in connection with the project. Injection of steam in the five spot pattern resulted in more than an insignificant increase in the ultimate recovery of crude oil from the property. E continues injecting steam in the five spot pattern until 1992, when new engineering studies indicate that it is reasonably expected that a line drive injection pattern will result in more than an insignificant increase in the amount of crude oil that was recovered as a result of injection in the five spot pattern. Based on the engineering studies, E changes from a five spot injection pattern to a line drive pattern.

The line drive injection pattern affects the same acreage and the same reservoir that was affected by the five spot pattern. Because the change in injection pattern does not affect acreage or a reservoir that was unaffected by the previous injection pattern and the steam drive project was not terminated for more than 36 months before the injection of steam in the line drive pattern, the change in injection pattern is not a significant expansion. Therefore, the change in injection pattern is not treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 7. More intensive application of a tertiary recovery method. In 1989, F, the owner of an operating mineral interest in a property, undertook an immiscible carbon dioxide displacement enhanced oil recovery project. F began injecting carbon dioxide into the reservoir under immiscible conditions. The injection of carbon dioxide under immiscible conditions resulted in more than an insignificant increase in the ultimate recovery of crude from the property. F continues to inject the same amount of carbon dioxide into the reservoir until 1992, when new engineering studies indicate that an increase in the amount of carbon dioxide injected is reasonably expected to result in a more than insignificant increase in the amount of crude oil that was recovered from the property as a result of the previous injection of carbon dioxide. Based on the engineering studies, F increases the amount of carbon dioxide injected into the reservoir. The increase in the amount of carbon dioxide injected affects the same acreage and the same reservoir that was affected by the previous injection of carbon dioxide. Because the additional carbon dioxide injected in 1992 does not affect acreage or a reservoir that was unaffected by the previous injection of carbon dioxide nor was the previous immiscible carbon dioxide method terminated for more than 36 months before the additional carbon dioxide was injected, the increase in the amount of carbon dioxide injected into the reservoir is not a significant expansion. Therefore, it is not a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

(e) Qualified tertiary recovery methods—(1) In general. For purposes of paragraph (a)(1) of this section, a "qualified tertiary recovery method" is any one or any combination of the tertiary recovery methods described in paragraph (e)(2) of this section. To account for advances in enhanced oil recovery technology, the Internal Revenue Service may by revenue ruling prescribe that a method not described in paragraph (e)(2) of this section is a "qualified tertiary recovery method." Generally, the methods identified in revenue rulings will be limited to those methods that involve the displacement of oil from the reservoir rock by means of modifying the properties of the fluids in the reservoir or providing the energy and drive mechanism to force the oil to

flow to a production well. The recovery methods described in paragraph (e)(3) of this section are not "qualified tertiary recovery methods."

(2) Tertiary recovery methods that qualify. (i) Miscible fluid displacement—The injection of gas (e.g., natural gas, enriched natural gas, a liquified petroleum slug driven by natural gas, carbon dioxide, nitrogen, or flue gas) or alcohol into the reservoir at pressure levels such that the gas or alcohol and reservoir oil are miscible;

(ii) Steam drive injection—The continuous injection of steam into one set of wells (injection wells) or other injection source to effect oil displacement toward and production from a second set of wells (production wells);

(iii) Microemulsion flooding—The injection of a surfactant system (e.g., a surfactant, hydrocarbon, cosurfactant, electrolyte, and water) to enhance the displacement of oil toward producing wells;

(iv) In situ combustion—The combustion of oil or fuel in the reservoir sustained by injection of air, oxygen-enriched air, oxygen, or supplemental fuel supplied from the surface to displace unburned oil toward producing wells. This process may include the concurrent, alternating, or subsequent injection of water.

(v) Polymer augmented waterflooding—The injection of polymeric additives with water to improve the areal and vertical sweep efficiency of the reservoir by increasing the viscosity and decreasing the mobility of the water injected. Polymer augmented waterflooding does not include the injection of polymers for the purpose of modifying the injection profile of the wellbore, rather than modifying the water-oil mobility ratio.

(vi) Cyclic steam injection—The alternating injection of steam and production of oil with condensed steam from the same well or wells.

(vii) Caustic flooding—The injection of water that has been made chemically basic by the addition of alkali metal hydroxides, silicates, or other chemicals.

(viii) Carbon dioxide augmented waterflooding—The injection of carbonated water, or water and carbon dioxide, to increase waterflood efficiency.

(ix) Immiscible carbon dioxide displacement—The injection of carbon dioxide into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This process may include the concurrent, alternating, or subsequent injection of water.

(x) Immiscible nonhydrocarbon gas displacement—The injection of nonhydrocarbon gas (e.g., nitrogen) into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This process may include the concurrent, alternating, or subsequent injection of water.

(3) *Recovery methods that do not qualify.* The term "qualified tertiary recovery method" does not include—

(i) Waterflooding—The injection of water into an oil reservoir to displace oil from the reservoir rock and into the bore of the producing well;

(ii) Cyclic gas injection—The increase or maintenance of pressure by injection of hydrocarbon gas into the reservoir from which it was originally produced;

(iii) Horizontal drilling—The drilling of horizontal, rather than vertical, wells to penetrate hydrocarbon bearing formations;

(iv) Gravity drainage—The production of oil by gravity flow from drainholes that are drilled from a shaft or tunnel dug within or below the oil bearing zones; and

(v) Other methods—Any recovery method not specifically designated as a qualified tertiary recovery method in either paragraph (e)(2) of this section or in a revenue ruling described in paragraph (e)(1).

§ 1.43-3 Certification. [Reserved]

§ 1.43-4 Qualified enhanced oil recovery costs.

(a) *Qualifying costs—in general.* Except as provided in paragraph (e) of this section, amounts paid or incurred in any taxable year beginning after December 31, 1990, that are qualified tertiary injectant expenses (as described in paragraph (b)(1) of this section), intangible drilling and development costs (as described in paragraph (b)(2) of this section), and tangible property costs (as described in paragraph (b)(3) of this section) are "qualified enhanced oil recovery costs" if the amount is paid or incurred with respect to an asset which is used for the primary purpose (as described in paragraph (c) of this section) of implementing a qualified enhanced oil recovery project. Any amount paid or incurred in any taxable year beginning after January 1, 1991, in connection with an enhanced oil recovery project is not a qualified enhanced oil recovery cost.

(b) *Costs defined—(1) Qualified tertiary injectant expenses.* For purposes of this section, "qualified tertiary injectant expenses" means any costs that are paid or incurred in connection with a qualified enhanced oil

recovery project and that are deductible under section 193 for the taxable year. See section 193 and § 1.193-1. Except as provided in paragraph (d)(2) of this section, qualified tertiary injectant expenses are taken into account in determining the credit with respect to the taxable year in which the tertiary injectant expenses are deductible under section 193.

(2) *Intangible drilling and development costs.* For purposes of this section, "intangible drilling and development costs" means any intangible drilling and development costs that are paid or incurred in connection with a qualified enhanced oil recovery project and for which the taxpayer may make an election under section 263(c) for the taxable year. Except as provided in paragraph (d)(2) of this section, intangible drilling and development costs are taken into account in determining the credit with respect to the taxable year in which the taxpayer may deduct the intangible drilling and development costs under section 263(c). For purposes of this paragraph (b)(2), the amount of the intangible drilling and development costs for which an integrated oil company may make an election under section 263(c) is determined without regard to section 291(b).

(3) *Tangible property costs—(i) In general.* For purposes of this section, "tangible property costs" means an amount paid or incurred during a taxable year for tangible property that is an integral part of a qualified enhanced oil recovery project and that is depreciable or amortizable under chapter 1. Except as provided in paragraph (d)(2) of this section, an amount paid or incurred for tangible property is taken into account in determining the credit with respect to the taxable year in which the property is placed in service for depreciation purposes in connection with a qualified enhanced oil recovery project. Costs paid or incurred for property placed in service by a taxpayer prior to use of the property by the taxpayer in a qualified enhanced oil recovery project are not tangible property costs.

(ii) *Integral part.* For purposes of this paragraph (b), tangible property is an integral part of a qualified enhanced oil recovery project if the property is used directly in a tertiary recovery method and is essential to the completeness of the method. All the facts and circumstances determine whether tangible property is used directly in a tertiary recovery method and is essential to the completeness of the method. Generally, property used to acquire or produce the tertiary injectant

or property used to transport the tertiary injectant to a project site is property that is an integral part of the project.

(iii) *Property used as an integral part of more than one qualified enhanced oil recovery project or for other activities.* If property is an integral part of more than one qualified enhanced oil recovery project, an amount paid or incurred for the property during a taxable year is allocated among the projects to determine the tangible property costs for each project during the taxable year. Similarly, if property is an integral part of a qualified enhanced oil recovery project and is also used in other activities (for example, an enhanced oil recovery project that is not a qualified enhanced oil recovery project), an amount paid or incurred for the property during a taxable year is allocated among the qualified enhanced oil recovery project and the other activities to determine the tangible property costs for the qualified enhanced oil recovery project during the taxable year. See § 1.613-5(a). Amounts paid or incurred for property are allocated under this paragraph (b)(3)(iii) only if the asset with respect to which the amounts are paid or incurred is used for the primary purpose of implementing a qualified enhanced oil recovery project. See paragraph (c) of this section. Any reasonable method may be used to allocate amounts paid or incurred for property. A method that allocates amounts paid or incurred for property based on the anticipated use in a project or activity is a reasonable method.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b). Assume for each of these examples that the qualified enhanced oil recovery costs are paid or incurred with respect to an asset which is used for the primary purpose of implementing a qualified enhanced oil recovery project.

Example 1. Qualified costs—in general. (i) In 1992, X, a corporation, acquires an operating mineral interest in a property and undertakes a cyclic steam enhanced oil recovery project with respect to the property. X pays a fee to acquire a permit to drill and hires a contractor to drill six wells. As part of the project implementation, X constructs a building to serve as an office on the property and purchases equipment, including downhole equipment (e.g., casing, tubing, packers, and sucker rods), pumping units, a steam generator, and equipment to remove gas and water from the oil after it is produced. X constructs roads to transport the equipment to the wellsites and incurs costs for clearing and draining the ground in preparation for the drilling of the wells. X purchases cars and trucks to provide transportation for monitoring the wellsites. In addition, X contracts with Y for the delivery of water to produce steam to be injected in

connection with the cyclic steam project, and purchases storage tanks to store the water.

(ii) The leasehold acquisition costs and the fees paid for the permit are not qualified enhanced oil recovery costs. The costs associated with hiring the contractor to drill, constructing roads, and clearing and draining the ground are intangible drilling and development costs that are qualified enhanced oil recovery costs. The downhole equipment, the pumping units, the steam generator, and the equipment to remove the gas and water from the oil after it is produced are used directly in the tertiary recovery method and are essential to the completeness of the method. Therefore, this equipment is an integral part of the project and the costs of the equipment are qualified enhanced oil recovery costs. However, the building that X constructs as an office and the cars and trucks X purchases to provide transportation for monitoring the wellsites are not used directly in the tertiary recovery method and are not essential to the completeness of the method. Therefore, the building and the cars and trucks are not an integral part of the project and their costs are not qualified enhanced oil recovery costs. The cost of the water X purchases from Y is a tertiary injectant expense that is a qualified enhanced oil recovery cost. The storage tanks X acquires to store the water are required to provide a proximate source of water for the production of steam. Therefore, the water storage tanks are an integral part of the project and the costs of the water storage tanks are qualified enhanced oil recovery costs.

Example 2. Diluent storage tanks. In 1992, B, the owner of an operating mineral interest, undertakes a qualified enhanced oil recovery project with respect to the property. B acquires diluent to be used in connection with the project. B stores the diluent in a storage tank that B acquires for that purpose. The storage tank provides a proximate source of diluent to be used in the tertiary recovery method. Therefore, the storage tank is used directly in the tertiary recovery method and is essential to the completeness of the method. Accordingly, the storage tank is an integral part of the project and the cost of the storage tank is a qualified enhanced oil recovery cost.

Example 3. Oil storage tanks. In 1992, Z, a corporation and the owner of an operating mineral interest in a property, undertakes a qualified enhanced oil recovery project with respect to the property. Z acquires storage tanks that Z will use solely to store the crude oil that is produced from the enhanced oil recovery project. The storage tanks are not used directly in the tertiary recovery process and are not essential to the completeness of the tertiary recovery method. Therefore, the storage tanks are not an integral part of the enhanced oil recovery project and the costs of the storage tanks are not qualified enhanced oil recovery costs.

Example 4. Oil refinery. C, the owner of an operating mineral interest in a property, undertakes a qualified enhanced oil recovery project with respect to the property. Located on C's property is an oil refinery where C will refine the crude oil produced from the project. The refinery is not used directly in the

tertiary recovery method and is not essential to the completeness of the method. Therefore, the refinery is not an integral part of the enhanced oil recovery project.

Example 5. Gas processing plant. The facts are the same as in Example 4 except that a gas processing plant is located on C's property. The gas processing plant is not used directly in the tertiary recovery process and is not essential to the completeness of the method. Therefore, the gas processing plant is not an integral part of the enhanced oil recovery project.

Example 6. Steam generator costs allocated. In 1988, D, the owner of an operating mineral interest in a property, undertook a steam drive enhanced oil recovery project with respect to the property. The 1988 project is not a qualified enhanced oil recovery project. In 1992, D decides to undertake a steam drive project with respect to a reservoir that was unaffected by the 1988 project. The 1992 project is a significant expansion that is a qualified enhanced oil recovery project. D purchases a new steam generator with sufficient capacity to provide steam for both the 1988 project and the 1992 project. The steam generator is used directly in the tertiary recovery method in the 1992 project and is essential to the completeness of the method. Accordingly, the steam generator is an integral part of the 1992 project. The steam generator is primarily used to provide steam to the 1992 project. Because the steam generator is also used to provide steam for the 1988 project, which is not a qualified enhanced oil recovery project, D must allocate the cost attributable to the steam generator to the 1988 project and the 1992 project. Only the portion of the cost of the steam generator that is allocable to the 1992 project is a qualified enhanced oil recovery cost.

Example 7. Carbon dioxide pipeline. In 1992, E, the owner of an operating mineral interest in a property, undertakes an immiscible carbon dioxide displacement project with respect to the property. E constructs a pipeline to convey carbon dioxide to the project site. E contracts with F, a producer of carbon dioxide, to purchase carbon dioxide to be injected into injection wells in E's enhanced oil recovery project. The cost of the carbon dioxide is a tertiary injectant expense that is a qualified enhanced oil recovery cost. The pipeline is used by E to transport the tertiary injectant, that is, the carbon dioxide to the project site. Therefore, the pipeline is an integral part of the project. Accordingly, the cost of the pipeline is a qualified enhanced oil recovery cost.

Example 8. Water source wells. In 1992, G, the owner of an operating mineral interest in a property, undertakes a polymer augmented waterflood project with respect to the property. G drills water wells to provide water for injection in connection with the project. The costs of drilling the water wells are intangible drilling and development costs that are paid or incurred in connection with the project. Therefore, the costs of drilling the water wells are qualified enhanced oil recovery costs.

(c) **Primary purpose—(1) In general.** For purposes of this section, a cost is a

qualified enhanced oil recovery cost only if the cost is paid or incurred with respect to an asset which is used for the primary purpose of implementing a qualified enhanced oil recovery project. All the facts and circumstances determine whether an asset is used for the primary purpose of implementing a qualified enhanced oil recovery project.

(2) **Tertiary injectant costs.** Tertiary injectant costs generally satisfy the primary purpose test of this paragraph (c).

(3) **Intangible drilling and development costs.** Intangible drilling and development costs paid or incurred with respect to a well that is used in connection with the recovery of oil by primary or secondary methods are not qualified enhanced oil recovery costs. A well used for primary or secondary recovery is not used for the primary purpose of implementing a qualified enhanced oil recovery project.

(4) **Tangible property costs.** Tangible property costs must be paid or incurred with respect to property which is used for the primary purpose of implementing a qualified enhanced oil recovery project. If tangible property is used partly in a qualified enhanced oil recovery project and partly in another activity, the property must be primarily used to implement the qualified enhanced oil recovery project.

(5) **Offshore drilling platforms.** Amounts paid or incurred in connection with the acquisition, construction, transportation, erection, or installation of an offshore drilling platform (regardless of whether the amounts are intangible drilling and development costs) that is used in connection with the recovery of oil by primary or secondary methods are not qualified enhanced oil recovery costs. An offshore drilling platform used for primary or secondary recovery is not used for the primary purpose of implementing a qualified enhanced oil recovery project.

(6) **Examples.** The following examples illustrate the principles of this paragraph (c).

Example 1. Intangible drilling and development costs. In 1992, H incurs intangible drilling and development costs in drilling a well. H intends to use the well as an injection well in connection with an enhanced oil recovery project in 1994, but in the meantime will use the well in connection with a secondary recovery project. H may not take the intangible drilling and development costs into account in determining the credit because the primary purpose of a well used for secondary recovery is not to implement a qualified enhanced oil recovery project.

Example 2. Offshore drilling platform. 1. the owner of an operating mineral interest in an offshore oil field located within the United

States, constructs an offshore drilling platform that is designed to accommodate the primary, secondary, and tertiary development of the field. Subsequent to primary and secondary development of the field, J commences an enhanced oil recovery project that involves the application of a qualified tertiary recovery method. As part of the enhanced oil recovery project, J drills injection wells from the offshore drilling platform J used in the primary and secondary development of the field and installs an additional separator on the platform. Because the offshore drilling platform was used in the primary and secondary development of the field and was not used for the primary purpose of implementing tertiary development of the field, costs incurred by J in connection with the acquisition, construction, transportation, erection, or installation of the offshore drilling platform are not qualified enhanced oil recovery costs. However, the costs J incurs for the additional separator are qualified enhanced oil recovery costs because the separator is used for the primary purpose of implementing tertiary development of the field. In addition, the intangible drilling and development costs J incurs in connection with drilling the injection wells are qualified enhanced oil recovery costs with respect to which J may claim the enhanced oil recovery credit.

(d) *Costs paid or incurred prior to first injection*—(1) *In general.* Qualified enhanced oil recovery costs may be paid or incurred prior to the date of the first injection of liquids, gases, or other matter (within the meaning of § 1.43-2(c)). Except as provided in paragraph (d)(2) of this section, if the first injection of liquids, gases, or other matter occurs after the taxable year with respect to which the qualified enhanced oil recovery costs are allowable, the costs may be taken into account in determining the amount of the credit as follows—

(i) If the first injection of liquids, gases, or other matter occurs on or before the date the taxpayer files the taxpayer's federal income tax return for the taxable year with respect to which the costs are allowable, the costs may be taken into account on that return, or

(ii) If the first injection of liquids, gases, or other matter occurs after the date the taxpayer files the taxpayer's federal income tax return for the taxable year with respect to which the costs are allowable, the costs may be taken into account on an amended return (or, in the case of a Coordinated Examination Program taxpayer, on a written statement treated as a qualified amended return) for the taxable year.

(2) *First injection more than 36 months after close of taxable year costs are paid or incurred.* If the first injection of liquids, gases, or other matter occurs

more than 36 months after the close of the taxable year in which costs are paid or incurred, the costs may not be taken into account in determining the credit for any taxable year. For purposes of this paragraph (d), injections in volumes significantly less than the volumes specified in the project plan, the unit plan of development, or another similar plan do not constitute the first injection of liquids, gases, or other matter.

(3) *Examples.* The following examples illustrate the provisions of paragraph (d) of this section.

Example 1. First injection before return filed. In 1992, K, a calendar year taxpayer, undertakes a qualified enhanced oil recovery project on a property in which K owns an operating mineral interest. K incurs \$1,000 of intangible drilling and development costs, which K may elect to deduct under section 263(c) for 1992. The first injection of liquids, gases, or other matter (within the meaning of § 1.43-2(c)) occurs in March 1993. K files a 1992 federal income tax return in April 1993. Because the first injection occurs before the filing of K's 1992 federal income tax return, K may take the \$1,000 of intangible drilling and development costs into account in determining the credit for 1992 on that return.

Example 2. First injection after return filed. The facts are the same as in *Example 1* except that the first injection does not occur until January 1994. Because the first injection has not occurred, K may not take the \$1,000 of intangible drilling and development costs into account when K files the 1992 federal income tax return in April 1993. K may take the \$1,000 intangible drilling and development costs into account in determining the credit for 1992 by filing an amended 1992 federal income tax return after the first injection occurs.

Example 3. First injection more than 36 months after taxable year. The facts are the same as in *Example 1* except that the first injection does not occur until June 1996. Because the first injection does not occur within 36 months of the close of the taxable year in which the costs are paid or incurred, K may not take the \$1,000 of intangible drilling and development costs into account, on either K's original 1992 federal income tax return or any other return, in determining the credit for any taxable year.

(e) *Other rules*—(1) *Anti-abuse rule.* Costs paid or incurred with respect to an asset that is acquired, used, or transferred in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit are not qualified enhanced oil recovery costs, regardless of whether the costs would otherwise be creditable for a single taxpayer or more than one taxpayer.

(2) *Costs paid or incurred to acquire a project.* A purchaser of an existing qualified enhanced oil recovery project may claim the credit for any section 43

costs in excess of the acquisition cost. However, costs paid or incurred to acquire an existing qualified enhanced oil recovery project (or an interest in an existing qualified enhanced oil recovery project) are not eligible for the credit.

(3) *Examples.* The following examples illustrate the principles of paragraph (e) of this section.

Example 1. Duplicating or unreasonably increasing the credit. L owns an operating mineral interest in a property with respect to which a qualified enhanced oil recovery project is implemented. L acquires pumping units, rods, casing, and separators for use in connection with the project from an unrelated equipment dealer in an arm's length transaction. The equipment is used for the primary purpose of implementing the project. Some of the equipment acquired by L is used equipment. The costs paid by L for the used equipment are qualified enhanced oil recovery costs. L does not need to determine whether the equipment has been previously used in an enhanced oil recovery project.

Example 2. Duplicating or unreasonably increasing the credit. M and N are co-owners of an oil property with respect to which a qualified enhanced oil recovery project is implemented. In 1992, M and N jointly purchase and place in service a nitrogen plant that supplies the tertiary injectant used in the project. M and N claim the credit for their respective costs for the plant. In 1994, X, a corporation unrelated to M or N, purchases the nitrogen plant and enters into an agreement to sell nitrogen to M and N. Because this transaction duplicates or otherwise unreasonably increases the credit, the credit is not allowable for the amounts incurred by M and N for the nitrogen purchased from X.

Example 3. Duplicating or unreasonably increasing the credit. The facts are the same as in *Example 2*. In addition, in 1995, M and N reacquire the nitrogen plant from X. This constitutes the acquisition of property in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit. Therefore, the credit is not allowable for amounts incurred by M and N for the nitrogen plant purchased from X.

Example 4. Duplicating or unreasonably increasing the credit. O owns an operating mineral interest in a property with respect to which a qualified enhanced oil recovery project is implemented. O acquires a pump that is installed at the site of the project. After the pump has been placed in service for 6 months, O transfers the pump to a secondary recovery project and acquires a replacement pump for the tertiary project. The original pump is suited to the needs of the secondary recovery project and could have been installed there initially. The pumps have been acquired in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit. Depending on the facts, the cost of one pump or the other may be a qualified enhanced oil recovery cost; however, O may not claim the credit with respect to the cost of both pumps.

Example 5. Acquiring a project. In 1993, P purchases all of Q's interest in a qualified enhanced oil recovery project, including all of Q's interest in tangible property that is an integral part of the project and all of Q's operating mineral interest. In 1994, P incurs costs for additional tangible property that is an integral part of the project and which is used for the primary purpose of implementing the project. P also incurs costs for tertiary injectants that are injected in connection with the project. In determining the credit for 1994, P may take into account costs P incurred for tangible property and tertiary injectants. However, P may not take into account any amount that P paid for Q's interest in the project in determining P's credit for any taxable year.

§ 1.43-5 At-risk limitation. [Reserved]

§ 1.43-6 Election out of section 43.

(a) *Election to have the credit not apply—(1) In general.* A taxpayer may elect to have section 43 not apply for any taxable year. The taxpayer may revoke an election to have section 43 not apply for any taxable year. An election to have section 43 not apply (or a revocation of an election to have section 43 not apply) for any taxable year is effective only for the taxable year to which the election relates.

(2) *Time for making the election.* A taxpayer may make an election under paragraph (a) of this section to have section 43 not apply (or revoke an election to have section 43 not apply) for any taxable year at any time before the expiration of the 3-year period beginning on the last date prescribed by law (determined without regard to extensions) for filing the return for the taxable year. The time for making the election (or revoking the election) is prescribed by section 43(e)(2) and may not be extended under § 1.9100-1.

(3) *Manner of making the election.* An election (or revocation) under paragraph (a)(1) of this section is made by attaching a statement to the taxpayer's federal income tax return or an amended return (or, in the case of a Coordinated Examination Program taxpayer, on a written statement treated as a qualified amended return) for the taxable year for which the election (or revocation) applies. The taxpayer must indicate whether the taxpayer is electing to not have section 43 apply or is revoking such an election and designate the project or projects to which the election (or revocation) applies. For any taxable year, the last election (or revocation) made by a taxpayer within the period prescribed in paragraph (a)(2) of this section determines whether section 43 applies for that taxable year.

(b) *Election by partnerships and S corporations.* For partnerships and S corporations, an election to have section

43 not apply (or a revocation of an election to have section 43 not apply) for any taxable year is made, in accordance with the requirements of paragraph (a) of this section, by the partnership or S corporation with respect to the qualified enhanced oil recovery costs paid or incurred by the partnership or S corporation for the taxable year to which the election relates.

§ 1.43-7 Effect date of regulations.

(a) *In general.* Unless a taxpayer makes an election under paragraph (b)(1) of this section, the provisions of §§ 1.43-1, 1.43-2, 1.43-3, 1.43-5, and 1.43-6 apply to costs paid or incurred after December 31, 1991, in connection with an enhanced oil recovery project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(b) *Election—(1) In general.* A taxpayer may elect to apply the provisions of §§ 1.43-1, 1.43-2, 1.43-4, 1.43-5, and 1.43-6 for any taxable years beginning after December 31, 1990, with respect to costs paid or incurred in connection with an enhanced oil recovery project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(2) *Time and manner of election.* An election under this paragraph (b) is made on the taxpayer's federal income tax return for a taxable year beginning after December 31, 1990, and before January 1, 1992, by attaching a written statement to the return that includes the name, address, and taxpayer identification number of the taxpayer making the statement and contains a declaration that an election is being made under this paragraph (b). The taxpayer's return must be filed not later than the last date prescribed by law (including extensions) for filing the return.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by removing the entry for section 1.43-2 and adding the following entry:

"1.32-2.....1545-0074".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91-30875 Filed 12-27-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA-14-1-5358; FRL-4088-8]

Approval and Promulgation of Air Quality Implementation Plans; MA.; (Amendment to Massachusetts' SIP, for Ozone and for Carbon Monoxide, for the Control of Air Pollution by Certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) amendment submitted by the Commonwealth of Massachusetts. This amendment establishes and requires the pre-construction and operating certification of roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The intended effect of this action is to control vehicular emissions of carbon monoxide (CO), hydrocarbons (HC) and nitrogen oxides (NO_x). These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This action is being taken under section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before January 29, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP amendment.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and (Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108).

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565-3227; FTS 835-3227.

SUPPLEMENTARY INFORMATION: On January 30, 1991, the Massachusetts Department of Environmental Protection (DEP) submitted an amendment to its

State Implementation Plan (SIP) for Ozone and for Carbon Monoxide, for the control of air pollution by certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The amendment contains definitions for four new terms added to 310 C.M.R. 7.00 and adds a new section, 310 C.M.R. 7.38, to establish the roadway tunnel ventilation systems certification program.

Background

The Commonwealth of Massachusetts Department of Environmental Protection—Division of Air Quality Control (DEP) has adopted a state regulation for certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. This new regulation establishes a process for reviewing and accepting certification for the construction and operation of roadway tunnel ventilation systems built after January 1, 1991 in the Metropolitan Boston Air Pollution Control District.

The certification process requires that anyone proposing to construct and operate a tunnel ventilation system that services a public roadway certify in writing to DEP prior to construction that the operation will not cause a violation or exacerbation of the National Ambient Air Quality Standards (NAAQSs). In addition, approximately one year after opening the roadway to the public and every five years thereafter, the operator shall demonstrate by applying for an operation certification that the operation of the ventilation system will not cause violations of the NAAQSs. In addition, interim reporting of air quality and traffic monitoring data is required in order to demonstrate continued compliance with the NAAQSs.

Finally, EPA does not consider roadway tunnel ventilation systems to be stationary sources as defined by Clean Air Act Section 302(z), as amended, because emissions from roadway tunnel ventilation systems are generated directly by mobile sources that use the roadway and are not generated by stationary sources.

Summary of SIP Revision

Preconstruction Certificate

Any proponent of a highway project that includes the construction and operation of any tunnel ventilation system in the Metropolitan Boston Air Pollution Control District, which begins construction on or after January 1, 1991, is required to submit information sufficient for the DEP to review the certification. Such information shall include: (1) An analysis of the existing

and projected non-methane hydrocarbon emissions from the project area, including the emissions from the tunnel ventilation system, the project roadway and the roadway network in the project area; (2) a comparative analysis that predicts the air quality impact within the project area after the project is built compared to a no-build alternative; (3) information concerning the ventilation building heights and locations, a conceptual site plan, the design criteria for the proposed ventilation equipment and project roadway, standard operating procedures and standard maintenance procedures for the tunnel ventilation system; (4) an analysis of the projected vehicle miles traveled (VMTs), average vehicle speeds and vehicle hours that are expected to occur within the project area when the project is completed compared with the projected VMT, projected average vehicle speeds, and projected vehicle hours travelled under the no-build alternative; and (5) an identification and analysis of feasible pollution prevention measures designed to reduce vehicle miles travelled including identification of the available short and long-term measures, the commitments to implement said measures, and a schedule for implementing said measures.

No construction on a tunnel ventilation system or project roadway subject to the tunnel ventilation certification process shall commence until the certification has been accepted. The DEP may impose conditions on any acceptance of a certification deemed necessary to meet the criteria of the state regulation and insure under standard operating and standard maintenance procedures that the ventilation system will not cause or exacerbate a violation of the NAAQSs, as set forth at 40 CFR 50, or result in an actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area when compared with the no-build alternative.

Operation Certificate

Any person who has received written acceptance of certification to construct a tunnel ventilation system may commence operation of the tunnel ventilation system and open the project roadway to general public use for a period not to exceed eighteen (18) months. That person must submit an application for an operating certificate no earlier than twelve (12) nor later than fifteen (15) months following the commencement of full operation of the tunnel ventilation system or opening of the project roadway for general public use. Any operating certification shall

demonstrate that the operation of the tunnel ventilation system shall, at a minimum, be in strict accordance with the maintenance of NAAQSs and demonstrate through actual measured emissions and traffic data that any actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area is lower than when compared with the no-build alternative.

In addition to demonstrating compliance, the operating certificate submittal shall include a contingency plan consisting of measures which could be implemented in cases of exceedances of the emission limitations in the certification.

Any operating certification accepted by the DEP pursuant to this subsection shall be in effect for five (5) years from the date of acceptance and shall be subject to renewal every five (5) years from the date of acceptance and shall be subject to renewal every five (5) years. The DEP shall apply the same criteria to the renewal of an operating certification that apply to the acceptance of pre-construction certification and the initial operating certification.

Completeness of the Application for Operating Certificate

The DEP shall, within 30 days of receipt of an initial operating certification or its renewal, make a determination whether all information necessary for review of said certification has been submitted. The DEP may impose such conditions on any acceptance of a certification issued as it deems necessary to ensure maintenance of the NAAQSs, and maintenance of any actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area at a lower concentration than would be provided by the no-build alternative.

Contingency Plans

The certification process requires a contingency plan that would be implemented when exceedances of the emission limitations stated in the certification occur. A contingency plan shall identify available contingency measures including, but not limited to, alternative tunnel ventilation system operations and maintenance, and transportation control measures; a commitment to implement the above measures; a schedule for implementing measures on a days-to-full effectiveness basis; and an analysis of the daily air quality impact of the measures on the emissions from the tunnel ventilation system and within the project area.

Mitigation Plan

If the DEP finds that one or more of the criteria set forth in the certification process or conditions established by DEP are being violated, or are likely to be violated within the period for which the operating certification is valid, then upon being notified by DEP the certificate holder shall submit to the DEP for review and approval a mitigation plan that identifies specific measures the operator intends to implement to bring the tunnel ventilation system and associated project area into compliance. These measures shall meet the criteria set forth in the State regulation and include implementation of any all conditions the DEP accepted as part of the certification. The mitigation plan shall at minimum contain: (1) A study that identifies the factors causing or contributing to the violation; (2) identification and an affirmative demonstration of specific measures which will result in compliance with the certificate criteria and DEP's conditions for acceptance of the certificate; (3) a demonstration of adequate funding mechanisms for implementation of these measures; and (4) a schedule for implementing the measures.

A mitigation plan shall examine measures that address the operation of the ventilation system as well as measures that address operation of the tunnel roadway and roadway network within the project area.

Completeness of the Mitigation Plan

The DEP shall review the mitigation plan and shall, after notice and public hearing, accept or reject the plan in writing no later than 90 days after the DEP determines that all information necessary to review the plan has been submitted. The DEP may impose any conditions on their acceptance of the plan it deems necessary to meet the certification criteria, as well as certification conditions accepted pursuant to the tunnel ventilation system certification process.

Compliance Monitoring

The certification process requires that the operator of the ventilation system (holder of the certificate) monitor air quality at the ventilation stack, downwind sites, and at DEP selected receptor sites. The certification process also requires the monitoring of traffic data within the project area, the numbers and locations of which shall be determined in consultation with the DEP.

Air Quality Impacts

The certification process established by this regulation is viewed as supporting air quality goals and assisting in the maintenance of projected air quality emissions.

EPA believes that the tunnel ventilation certification process will improve air quality because of the requirement to not cause or exacerbate a violation of any NAAQSs. In addition, the certification process will not allow a project to increase actual amounts of non-methane hydrocarbons as compared to a non-build alternative. The tunnel ventilation certification process requires the monitoring of emissions and traffic data to ensure that the tunnel ventilation system continues to meet the certification criteria in the future.

EPA's review of this material indicates that the certification process submitted as a SIP amendment will result in improved air quality. EPA is therefore proposing to approve the Massachusetts SIP amendment for Ozone and for Carbon Monoxide, for the control of air pollution by certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District, which was submitted on January 30, 1991. EPA is soliciting public comment on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the "ADDRESSES" section of this notice.

Proposed Action

EPA is proposing to approve the SIP amendment for Ozone and for Carbon Monoxide, for the control of air pollution by certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District.

Under 5 U.S.C. 605(b), I certify that this SIP amendment will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for amendment to any State

Implementation Plan. Each request for amendment to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP amendment will be based on whether it meets the requirements of Sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: December 17, 1991.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 91-31153 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 185

[OPP-300238A; FRL-4008-3]

Dicofol; Revocation of Food Additive Regulation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of comment period.

SUMMARY: This document extends to February 18, 1992, the comment period for persons who want to submit comments on EPA's Carcinogen Review and Verification Effort (CRAVE) review of the carcinogenicity of dicofol.

DATES: Written comments on CRAVE review, identified by the Office of Pesticide Programs (OPP) document control number [OPP-300238A], must be received on or before February 18, 1992. Written comments on other aspects of the proposed revocation must be received by January 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Further information on procedures for

submitting comments, including "Confidential Business Information" (CBI), is provided in the proposed rule (see the *Federal Register* of October 4, 1991 (56 FR 50466)).

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd Floor, Crystal Station Building # 1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8034.

SUPPLEMENTARY INFORMATION: CRAVE is a panel of EPA scientists that reviews carcinogenicity findings supporting EPA regulations. CRAVE also provides the official Agency position on the carcinogenicity of specific chemicals. The proposed revocation (56 FR 50466; Oct. 4, 1991) provides a detailed discussion of issues related to the carcinogenicity of dicofol. Further, it stated that the CRAVE meeting to review the carcinogenicity of dicofol would be held in early November of 1991. It was projected that minutes of this meeting would be issued within 2 weeks after the meeting and made available in the public docket for review by interested persons. EPA expected that the 90-day comment period would accommodate persons wanting to comment on the CRAVE review. After the revocation was published, the meeting was advanced to October 1991. Copies of letters notifying registrants of this change were placed in the public docket.

Subsequently, the October meeting was postponed. The rescheduled meeting was held on December 4, 1991. However, CRAVE did not reach a final decision at the meeting. CRAVE expects it will have a final decision by early January 1992, and the minutes will be available in the public docket by January 17, 1992. To ensure that persons wanting to comment on the CRAVE review will have adequate time to do so, the Agency is extending the comment period to February 18, 1992. This extension is limited to comments on the CRAVE review. All other comments must be submitted by January 2, 1992.

Further information on the proposed revocation, public comment procedures, availability of the administrative record, and other regulatory requirements are available in the proposed rule (56 FR 50466; Oct. 4, 1991).

Dated: December 20, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 91-31148 Filed 12-27-91; 8:45 am]

BILLING CODE 6550-50-F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission proposes to vacate its prescription of uniform bills of lading and livestock contracts employed by rail and water carriers and to remove 49 CFR part 1035—Bills of Lading—from the Code of Federal Regulations. Continuing to prescribe the form of such documents appears unnecessary in light of our experience, widespread exemption of rail transactions from regulation, and the success of measures we have taken to minimize regulatory requirements. We invite comments from interested parties.

DATES: Comments must be received by February 13, 1992.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 495, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660, [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION:

In 1919 and 1921, the Interstate Commerce Commission prescribed uniform bills of lading and livestock to be used by rail and water carriers. The Commission took that action in response to complaints alleging varying and unfair carrier practices when carriers began implementing the Carmack and Cummins amendments to the Interstate Commerce Act relating to carrier liability for loss and damage. *Bills of Lading*, 52 I.C.C. 672 (1919); *Export Bill of Lading*, 64 I.C.C. 347 (1921); and *Domestic Bill of Lading and Live Stock Contract*, 64 I.C.C. 357 (1921). In the seven decades since then, the Commission has modified those prescriptions only a few times, in minor ways.

Although 49 U.S.C. 11707(a)(1) directs carriers to issue "receipts or bills of

lading," the Interstate Commerce Act does not require the Commission to prescribe the form those documents must take. The Commission never found it necessary to prescribe a form for motor carrier bills of lading, although motor carriers are subject to the same requirements as rail carriers.¹ Nor has the Commission tightly controlled railroad and water carrier bills of lading. Moreover, in their present form, the regulations codified at 49 CFR part 1035 are confusing and outdated. Given these circumstances, as well as the many broad exemptions of railroad transactions from regulation granted by the Commission, and other measures taken by the Commission in recent years to minimize regulatory requirements, it appears necessary for us to continue to prescribe the form of bills of lading employed by rail and water carriers.²

Accordingly, we propose to vacate and to remove from the Code of Federal Regulations the bill of lading and livestock contract prescriptions codified at 49 CFR part 1035. Statutory provisions, such as those contained at 49 appendix U.S.C., 11707, Liability of Common Carriers Under Receipts and Bills of Lading, and 49 U.S.C. 10730, Rates and Liability Based on Value, would remain in effect. The Commission's reasonable practices jurisdiction under 49 U.S.C. 10707 would also remain in effect.

There may be little or no need or demand for changes in bills of lading terms and format. Bill of lading forms may still be published, because 49 U.S.C. 10702(a)(1) requires carriers to issue bills of lading and 49 U.S.C. 10702(a)(2)(A) requires that carriers "establish * * * rules and practices on * * * bills of lading * * *." The current bill of lading form, whether produced as a paper document or electronically generated and/or transmitted, may still be used. If a need for change develops,

¹ Commission regulations in 49 CFR 1051.1 require motor common carriers to issue receipts or bills of lading containing a few items of basic information. Nevertheless, the Commission has not prescribed the contract terms, conditions, or formats of motor carrier bills of lading. Because § 1051.1 is not outdated and confusing like the rail carrier material in part 1035, we see no need to vacate the section. There are two other regulations regarding bills of lading (49 CFR 1056.6 and 49 CFR 1061.1). We plan to retain them because they pertain to household goods service, a specialized operation affecting individual consumers.

² Moreover, Article 7 of the Uniform Commercial Code deals extensively with bills of lading. With a Commission-prescribed form, carriers have not been free to follow the UCC. To the extent the Commission frees carriers from prescribed forms, it will allow those carriers more closely to conform their business practices to the rest of the commercial marketplace, to the extent not otherwise consistent with federal law.

however, implementation of this proposed action will have removed the regulatory impediment of the prescriptions now in place.

We invite comments from interested persons on this proposal.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1035

Railroads, Water carriers.

For the reasons set out in the preamble, title 49, chapter X, part 1035 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1035 [REMOVED]

1. Part 1035 is proposed to be removed.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.
Decided: December 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91 31098 Filed 12-27-91; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 56, No. 250

Monday, December 30, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 27, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 720-2118.

Reinstatement

• Farmers Home Administration

7 CFR 1924-C, Planning and Performing Site Development Work

Form 1924-20

On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,150 responses; 6,500 hours

Jack Holston (202) 720-9736

• Farmers Home Administration

7 CFR 1944-J, Section 504 Rural Housing Loans and Grants

On occasion

Individuals or households; 16,300

responses; 1,394 hours

Jack Holston (202) 720-9736

• Farmers Home Administration

7 CFR 1951-F, Analyzing Credit Needs and Graduation of Borrowers

On occasion

Individuals or households; State or local

governments; Farms; Businesses or

other for-profit; Non-profit

institutions; Small businesses or

organizations; 119,620 responses;

84,823 hours

Jack Holston (202) 720-9736

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91-31141 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-01-M

Federal Crop Insurance Corporation

[RCD-91-SRA; Doc. No. 0100s]

Termination of the Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of intent to terminate the standard reinsurance agreement.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its intention to terminate the current (1992) Standard Reinsurance Agreement (Agreement), effective as of June 30, 1992, in accordance with the provisions of Section V, Paragraph I, Renewal, of the Agreement.

The Food, Agriculture, Conservation, and Trade Act of 1990 (The Farm Act of 1990), enacted on November 28, 1990 (Pub.L. 101-264, 104 Stat. 3359), amended the Federal Crop Insurance Act (5 U.S.C. 1501 *et seq.*) to provide that, beginning with the 1992 reinsurance year, the Federal Crop Insurance Corporation shall revise its reinsurance agreements to require an assumption of a greater share of risk by reinsured companies, among other issues.

This notice of termination is necessary to provide FCIC sufficient time to address issues and changes for the 1993 Agreement consistent with the direction provided by the Farm Act of 1990.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 235-1168.

Done in Washington, DC on December 12, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-31032 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-08-M

Soil Conservation Service

Blossom Lake Inlet Critical Area Treatment Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Blossom Lake Inlet RC&D Measure, Branch County, Michigan.

FOR FURTHER INFORMATION CONTACT:

Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an

environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 700 ft. of drain cleaning and shaping, 500 tons of rock riprap, 2 acres of seeding and the removal of 300 tons of sediment. Total construction cost \$16,500; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 19, 1991.

Homer R. Hilner,

State Conservationist.

[FR Doc. 91-31019 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Kalamazoo Nature Center Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environment impact statement is not being prepared for the Kalamazoo Nature Center RC&D Measure, Kalamazoo County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for Critical Area Treatment. The planned works of improvement include the following items: 500 ft. of diversion, 40 tons of rock riprap, 2 acres of seeding, 450 ft. of drop pipe spillway and 500 ft. of fence. Total construction cost is estimated to be \$18,000; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 19, 1991.

Homer R. Hilner,

State Conservationist.

[FR Doc. 91-31020 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Mills Road Extension Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environment impact statement is not being prepared for the Mills Road Extension RC&D Measure, Ogemaw County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 600 ft. of fencing, 20 ft. of stairs, 3 platforms, 1,800 ft. of walkway, 50 cu. yds. of topsoil, 150 yds. of gravel, 2 surface inlets, one-half acre of seeding, 1000 lbs. of mulching, 1,100 sq. ft. of erosion control netting and one project sign. Total construction cost is \$24,000; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 20, 1991.

Homer R. Hilner,
State Conservationist.

[FR Doc. 91-31021 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Muddy Creek-Orderville Watershed, UT

AGENCY: Soil Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives the notice that an environmental impact statement is being prepared for the Muddy Creek-Orderville Watershed, Kane County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, PO Box 11350, Salt Lake City, Utah, 84147-0350, telephone (801) 524-5050.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) has been prepared for this federally assisted action. During the review of this Environmental Assessment concerns surfaced that this project would significantly impact the environment. As a result of these concerns, Frank Holt, State Conservationist, has determined that an Environmental Impact Statement (EIS) should be prepared and reviewed for this project.

Copies of the Environmental Assessment can be obtained by calling (801) 524-5054 or writing the Soil Conservation Service at P.O. Box 11350, Salt Lake City, UT 84147-0350.

The purpose of the action is watershed protection. The watershed is presently in a degrading condition, due to accelerating sheet, rill and gully erosion rates. This erosion is permanently damaging the long-term productivity of the watershed to support plant and animal life. It is also causing off-site damage by yielding salt-bearing

sediment to the East Fork of the Virgin River, a part of the Colorado River System.

The Soil Conservation Service is presently seeking information and comments on the scope of issues to be addressed and alternatives and impacts to be considered in the EIS from agencies, groups and individuals.

Items that have raised a high level of concern either in the original Environmental Assessment or from comments received from reviewers include: Erosion and sedimentation, the use of chaining as a land management procedure, water quality, plant cover, economic analysis, future grazing impacts, wildlife habitat, threatened and endangered species, archaeology sites, change in hydrologic regime, downstream salinity impacts, riparian protection, wilderness, Native American religious sites, success of vegetative treatment, diversity of plants included in the proposed seed mix and use of hazardous chemicals.

The Soil Conservation Service invites written comments and suggestions on the scope of issues related to this proposal. For most effective use in preparing the EIS, information and comments should be received in the SCS office by February 28, 1992.

Interested people are invited to visit with Soil Conservation Service personnel at the State Office, room 4012, Federal Building, 125 S. State St., Salt Lake City or the Field Office, 82 N. 100 East, Cedar City during the EIS process.

Another formal comment period will be held during the review of the draft EIS. The comment period on the draft EIS will begin with publication of the Notice of Availability in the **Federal Register** and extend for 45 days from that date. The draft is scheduled to be completed in March of 1993.

The final EIS is expected to be released in June, 1993. Frank Holt, State Conservationist, who is the responsible official will then make a decision regarding this proposal after considering the comments, responses and environmental consequences discussed in the final EIS.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 23, 1991.

Francis T. Holt,
State Conservationist

[FR Doc. 91-31118 Filed 12-27-91; 8:45 am]

BILLING CODE 2410-16-M

Wayne Elementary Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wayne Elementary Critical Area Treatment RC&D Measure Plan, Wayne County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regarding, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 75 tons per acre per year. Conservation practices include vegetated waterways land smoothing, culvert, heavy use area protection, seeding, and mulching.

Wayne County Critical Area Treatment RC&D Measure Plan, Wayne County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials."

Dated: December 18, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91-31099 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Mount Pleasant Hearing—Latino Concerns

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Public Law 98-183, 97 Stat. 1301, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on January 29, 1992, beginning at 9 a.m., in the Auditorium at the Carlos Rosario Adult Education Center, 34th Street and Wisconsin Avenue, NW., Washington, DC.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, particularly concerning the Latino community in the District of Columbia.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC, December 23, 1991.

Arthur A. Fletcher,

Chairman.

[FR Doc. 91-31092 Filed 12-27-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Interim Capital Construction Fund Agreement and Certificate.

Form number: NOAA Form 88-14; OMB—0648-0090.

Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 1,000 respondents; 2,250 reporting hours; average hours per response—2.25 hours.

Needs and uses: Information is used to establish eligibility for agreements for the Capital Construction Fund Program, and to certify completion of the agreements' objectives.

Affected public: Business or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-31095 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Nan-Wei Deng, Also Known as Charles Deng and Doing Business as Energy and Materials of America, Inc.; Order Modifying Temporary Denial Order

In the Matter of: Nan-Wei Deng, also known as Charles Deng individually with addresses at 1465 67th Street, Brooklyn, New York 11219 and 32 Alicewood Drive, Markham, Ontario L3S 3C9 Canada and doing business as Energy And Materials of America, Inc., 54 Walker Street, New York, New York 10013, Respondents.

On November 27, 1991, pursuant to the provisions of Section 788.19 of the Export Administration Regulations

(currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 49 U.S.C.A. app. 2401-2420 (1991)) (Act),¹ I issued an order temporarily denying all United States export privileges of Nan-Wei Deng, also known as Charles Deng, individually and doing business as Energy and Materials of America, Inc. (hereinafter collectively referred to as Deng). 56 FR 63496 (December 4, 1991). In addition to denying Deng's U.S. Export privileges for a period of 180 days from the date of issuance,² the Order also named Onyx Computers, 30 Mural Street, Unit #10, Richmond Hill, Ontario, Canada (Onyx), as a person related to Deng. Accordingly, Onyx was made subject to the provisions of the Order as a related person.

The Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce ("Department"), and Onyx have jointly moved, based on evidence presented to the Department by Onyx, to modify the temporary denial order by deleting Onyx as a person related to Deng. In addition, the Department and Onyx have moved to delete the "in care of Onyx" address from the addresses provided for Deng in the Order.

Based on the submission by the Department and Onyx, I hereby grant the motion to modify the temporary denial order. Accordingly, the temporary denial order entered against Deng on November 27, 1991, is modified to read as follows:

Ordered

I. All outstanding individual validated licenses in which Nan-Wei Deng, also known as Charles Deng, individually or doing business as Energy and Materials of America, Inc. (EMAI), appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Deng's or EMAI's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from the date of entry of the November 27, 1991

¹ The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

² The temporary denial order is effective until May 25, 1992, which is 180 days from November 27, 1991.

order, Nan-Wei Deng, also known as Charles Deng, individually with addresses at 1465 67th Street, Brooklyn, New York 11219, and 32 Alicewood Drive, Markham, Ontario L3S 3C9, Canada; and doing business as Energy and Materials of America, Inc., with an address at 54 Walker Street, New York, New York 10013, and all their successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Deng and/or EMAI by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution

Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect until May 25, 1992.

VII. In accordance with the provisions of Section 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: December 20, 1991.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 91-31100 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance; Bitrode Corp, et al.

AGENCY: Economic Development Administration (EDA), D.C.

ACTION: To give firms an opportunity to comment.

Firm name	Address	Date petition accepted	Product
Bitrode Corporation	1642 Manufacturers Drive Fenton, MO 63026	11/20/91	Battery Testers and Battery Chargers.
Electrix, Inc.	45 Spring Street New Haven, CT 06519	11/20/91	Desk Fans and Heaters.
Lanpar, Inc. DBA Oakwood Interior.	19129 South Hamilton Avenue Cardena, CA 90248	11/20/91	Manufacturer of Wooden Bedroom Furniture.
Virginia Walton, Ltd.	1518 1st Avenue South Seattle, WA 98134	11/22/91	Men, Women and Children's Jackets and Pants and Adult Shorts.
The Master Products Company.	6400 Park Avenue Cleveland, OH 44105	11/22/91	Washers, Fittings for Chairs, Ball Joints for Automobile Axles, Back Plates for Mirrors of Steel.
Bushmaster Firearms, Inc.	999 Roosevelt Trail Bldg. 3 Windham, ME 04062	11/22/91	M16/AR15 Rifles and Weapon Parts.
Global Manufacturing, Inc.	1102 W. 14th Street Little Rock, AR 72202	11/22/91	Rotary Industrial Vibrators.
Delta Clutch, Inc.	250 Main Street Harrisville, RI 02830	11/29/91	Remanufactured Clutches.
Hai Hardin Apparel, Inc.	117 East 14th Street Kansas City, MO 64146	11/29/91	Women's Dresses.
Bayer Glass Studios	179 Dogwood Avenue Crawford, CO 81415	12/02/91	Bowls of Sand, Soda, Color Rods (5% Lead).
Litho-Color Hawaii	443 Nimitz Highway Honolulu, HI 96817	12/02/91	Pre-Press Film.
Ski Tuner Manufacturing, Inc.	Route 100, Box 1059 Waitsfield, VT 05673	12/03/91	Ski Tuner Machines.

Firm name	Address	Date petition accepted	Product
American Manufacturing Co., Inc.	3600 North Hawthorne Street Chattanooga, TN 37406	12/04/91	MDSE Display Racks, Harness and Saddlery Hardware, Floral Display Items and Appliance Racks.
Meirick, Inc.	741 Ten Mile Drive Frisco, CO 80443	12/05/91	Uninterruptible Power Systems for Computers and Telecommunication Equipment.
Selkirk Seed Company, Inc.	HCR 85, Box 139 Bonners Ferry, ID 83805	12/05/91	Processed Timothy, Rape Seed and Feed Barley.
Ten-Tec, Inc.	1185 Dolly Parton Parkway Sevierville, TN 37862	12/05/91	Transceivers for Amateur Radio, Commercial and Nontactical Military Applications.
Granite Importers, Inc.	South Vine St. Box 712 Barre, VT 05641	12/09/91	Fabricated Architectural Stone Made From Granite.
Parlec, Inc.	101 Perinton Parkway Fairport, NY 14450	12/09/91	Tool Holders, Tool Presetters, Auto Facer, Numer Tap/Numer Float and Boring Tools.
Questronics, Inc.	3570 South West Temple Salt Lake City, UT 84115	12/09/91	Monitors.
Sure-Cast Industries, Inc.	11 Mill Street Batavia, NY 14020	12/09/91	Housing and Valves.
Transworld Supplies, Inc.	246 Cleveland Avenue Loveland, CO 80537	12/09/91	Prepared Pigments.
Electronic Plating Service, Inc.	13021 South Budlong Avenue Gardena, CA 90247	12/09/91	Loose, Continuous, and Rack Parts.
Amfab Manufacturing Co., Inc.	1747 West Grand Avenue Chicago, IL 60622	12/09/91	Folding Leg Tables of Wood and Metal
Me & Sam, Inc.	1372 Broadway-Room 402 New York, NY 10018	12/10/91	Ladies Knit Acrylic/Cotton Slacks and Tops
Mt. Baker Plywood, Inc.	2929 Roeder Avenue Bellingham, WA 98227	12/12/91	Plywood.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 23, 1991.

David F. Witschi,
Acting Deputy Assistant Secretary for
Program Operations.

[FR Doc. 91-31094 Filed 12-27-91; 8:45 am]
BILLING CODE 3510-24-M

International Trade Administration [C-557-806]

Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT:
Vincent Kane or Gary Bettger, Office of
Countervailing Investigations, Import
Administration, International Trade
Administration, U.S. Department of
Commerce, 14th Street and Constitution
Avenue, NW., Washington, DC 20230;
telephone: (202) 377-2815 or 377-2239.

Preliminary Determination

Based on our investigation, we preliminarily determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the Federal Register (56 FR 48158, September 24, 1991), the following events have occurred. On October 1, 1991, we presented a questionnaire to the Government of Malaysia (GOM) in Washington, DC, concerning petitioner's allegations. On October 15, 1991, the United States International Trade Commission (ITC) issued its preliminary determination that imports of extruded

rubber thread from Malaysia materially injure, or threaten material injury to, a U.S. industry.

On October 25, 1991, petitioner submitted additional subsidy allegations and requested a 21-day extension of the preliminary decision, which the Department granted. On November 21, 1991, petitioner amended its October 25, 1991, request for extension of the preliminary decision to include an additional seven-day extension, which the Department also granted. Finally, by letter dated December 10, 1991, respondents and their U.S. importers challenged petitioner's standing to file on behalf of the domestic producers of the like product for certain types of extruded rubber thread.

Scope of Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, i.e., 0.007 inch or 140 gauge, to 1.42 mm, i.e., 0.56 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

In their letter of December 10, 1991 respondents challenged petitioner's

standing. Respondents stated that since they believe that North American Rubber Thread, Inc. does not produce, and may not have the capacity to produce, several categories of extruded rubber thread, the countervailing duty investigation should be terminated with respect to these certain products. Specifically, respondents question whether petitioner produces the following types of extruded rubber thread: (1) Food grade, (2) tale finish, (3) fine gauge, and (4) heat resistant.

The ITC has preliminarily determined in this proceeding that there is one like product, which includes all of the merchandise defined by the scope of this investigation. We have no basis to disagree with the ITC's determination. Accordingly, we determine that petitioner produces a product like the imported product and, hence, has standing to file this investigation.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1990, which corresponds to the fiscal year of four of the five respondent companies. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

In determining the benefits received under the various programs described below we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports to the United States. The program rates were then summed to arrive at a country-wide rate for all programs.

Pursuant to 19 CFR 255.20(d), we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rates for Filati and Rubfil were significantly different from the country-wide rate. Therefore, these firms received individual rates. For the remaining three firms, we recalculated the country-wide rate, based solely on the benefits received by these three firms. We then assigned the recalculated overall country-wide rate to these three firms, and all other manufacturers, producers, and exporters, except Filati and Rubfil.

1. Rubber Discount Scheme

Under this program, the GOM provides a rebate of 20 sen per kilogram on natural rubber latex purchased to

manufacture products for exports. The natural rubber latex eligible for the discount must be purchased from, or through, the Malaysian Rubber Development Corporation (MARDEC), the Federal Land Development Authority (FELDA), or the Rubber Industry Smallholder Development Authority (RISDA). Subsequent to the purchase of the rubber an "authorization letter" from the Malaysian Department of Treasury directs these suppliers to provide the discount in the form of a cash rebate. Because this program is limited to exporters, we have preliminarily determined it to be countervailable.

A firm can precisely calculate the rubber discount rebate for each export transaction at the moment the transaction is made. Therefore, we have focused on rebates earned during the period of review. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand (52 FR 37196, October 5, 1987). According to the responses, all respondent companies earned rubber discounts during the period of review.

To calculate the benefit from this discount, we first deducted the amount of fees paid in order to qualify for receipt of the discounts. Companies receiving benefits must pay an outside auditor's fee and an authorization fee to MARDEC. In accordance with section 771(6)(C) of the Act, we have deducted these fees from the rebate amount. Next, we made an allowance to the discount amount for its delayed receipt. Because the government has mandated that companies may apply for the discount only every six months, we have assumed an average deferral of three months before the discount may be received. In accordance with section 771(6)(B) of the Act, we have allowed an offset for this deferral, basing the offset on the opportunity cost to the company measured at the three-month fixed deposit rate.

We divided the ringgit amount of discounts earned by each company in 1990 (net of the fees and offset described above) by that company's total exports, since discounts applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 2.78 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia of extruded rubber thread, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows: Filati—3.23 percent and Rubfil—3.16 percent.

2. Export Credit Refinancing (ECR)

The Bank Negara Malaysia, the central bank of Malaysia, provides order-based pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively, and "certificate of performance" (CP) based pre-shipment financing. Order-based financing is provided for specific sales to specific markets. CP-based financing, which is a line of credit based on the previous 12 months' export performance, cannot be tied to specific sales in specific markets.

According to the responses, all five respondent companies used export credit financing during the review period. We note that all of the pre-shipment financing received during the period was CP-based.

Because only exporters are eligible for ECR loans, we determine that they are countervailable to the extent that they are provided at preferential rates. In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. In past cases involving Malaysia, we used banker's acceptances as the most comparable source of short-term commercial financing. (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia (53 FR 13303, April 22, 1988) (Wire Rod)). Since Wire Rod, however, our practice has been to select the predominant source of short-term financing in the country as our benchmark for short-term loans. See Final Affirmative Countervailing Duty Determination, New Steel Rails, Except Light Rails, from Canada (54 FR 31991, August 3, 1989). Also see § 355.44(b)(3) Proposed Substantive Countervailing Duty Regulations, 54 FR 23366, May 31, 1989. Because banker's acceptances account for only a small portion of short-term financing in Malaysia, we have determined to discontinue the use of these loans as a benchmark. Instead, we will rely on the predominant source of short-term financing in Malaysia. In Malaysia, term loans offered by commercial banks are the most predominant form of short-term financing with overdraft loans being the second most predominant form. The average interest rates for these types of financing, however, are not available. Therefore, we have used as our benchmark for ECR loans, the average commercial bank lending rate as an estimate of these rates because over eighty percent of the loans made by commercial banks were either term loans or overdrafts.

Based on a comparison of the ECR rates and the benchmark rate, we find that ECR loans are provided at preferential rates and, therefore, are countervailable.

To calculate the benefit from ECR loans on which interest was paid in 1990, we used our short-term loan methodology which has been applied consistently in our past determinations. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico (53 FR 15290, April 28, 1988); see also *Alhambra Foundry versus United States*, 626 F. Supp. 402 (CIT, 1985). This methodology is also described in more detail under section 355.44(b)(3) of "Countervailing Duty Notice of Proposed Rulemaking and Request for Public Comment" (54 FR 23366, May 31, 1989). Because the post-shipment ECR loans were shipment-specific, we included in our calculations only those loans which financed exports of extruded rubber thread to the United States. Because the CP-based, pre-shipment loans were not shipment-specific, we included all CP loans on which interest was paid during the review period.

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. We then divided each company's interest savings by that company's total exports, in the case of the CP loans, or by its exports to the United States, in the case of post-shipment loans. We then applied the calculation methodology outlined above.

On this basis, we preliminarily determine the net subsidy from this program to be 1.84 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows: Filati—0.78 percent and Rubfil—1.06 percent.

3. Electricity Discount Program for Exporters

The Electricity Discount Program provided a reduction in the electricity rates charged to qualifying companies. The program was originally implemented in 1985 as a discount for rubber-based manufacturers. That program was, however, terminated and replaced by a new electricity Discount Program in 1989.

The program in effect during our review period provided discounts to companies that produced a manufactured product covered by the Industrial Coordination Act of 1975 and which exported at least 50 percent of their production. The amount of the discount was calculated by computing 20 percent of the ratio of export to total sales and multiplying the amount by the total electricity charge. According to the responses, Heveafil and Rubberflex received discounts from this program during the review period. Because this program is limited to exporters, we have preliminarily determined it to be countervailable.

To calculate the benefit from this program, we divided the total amount of discounts received by each company by that company's total exports because the benefits are not shipment-specific. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.02 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an electricity discount during the review period.

This program was terminated on March 1, 1990. Consistent with our policy of taking into account measurable program-wide changes that occur before the preliminary determination, we are taking into account the termination of the electricity discount program for cash deposit purposes. Therefore, for purposes of the preliminary determination, we will not include the net bounty or grant determined for this program in our calculation of the estimated countervailing duty cash deposit rate.

4. Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales

The Investment Incentives Act of 1968 provided for an abatement of income tax based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law also provides an abatement of income tax based on export performance. Specifically a portion of income, equal to 50 percent of the ratio of export sales to total sales is exempt from income tax. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an

investment tax allowance under the Promotion of Investments Act of 1986. Because this program is limited to exporters, we have preliminarily determined it to be countervailable.

According to the responses, only Heveafil used this program during the review period. In addition to the export abatement, Heveafil used several other tax allowances available to offset taxable income during the review period. As discussed below, we have found certain of these allowances to be countervailable.

During the review period, the combination of countervailable and non-countervailable allowances substantially exceeded taxable income. Because we countervail only that portion of the available export allowances actually used to offset taxable income in the review period, we had to determine first which of the allowances were used and to what extent. Heveafil was unable to document which of the allowances were actually used to offset taxable income. Therefore, we determined that it was reasonable to assume that a company would use the export abatement before any of the other allowances available in this case, because, unlike the other allowances, the export abatement could not be carried forward for use in future tax years.

To calculate the benefit, we determined the total income and development tax savings for each company from this program during the review period and divided it by the company's total exports because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.73 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an export tax abatement during the review period.

For Heveafil, the export abatement did not fully offset taxable income and, hence, other allowances were used. Therefore, it was necessary to decide which of the remaining countervailable and non-countervailable allowances were used for tax abatement purposes. In making this decision, we took into account the fact that the central purpose of the countervailing duty law is to encourage foreign governments not to provide competitive benefits to their exporting industries. In this investigation, this purpose can best be served by selecting the remaining

countervailable allowances before selecting any of the non-countervailable allowances available to the companies to offset taxable income. By taking this approach, we have countervailed the full amount of the countervailable, export allowances earned by the companies and left as an unused balance to be carried forward to future tax years the non-countervailable allowances.

5. Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

In addition to the Export Abatement discussed above, the Promotion of Investments Act of 1986 provided for an abatement of income tax in the amount of five percent of the ratio of export sales to total sales times the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1986, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986. According to the responses, Heveafil used this program during the review period.

Because this program is limited to exporters, we have preliminarily determined it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the review period for each company and divided it by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.09 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an indigenous materials export abatement during the review period.

6. Industrial Building Allowance

Sections 63 through 66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance, which had been limited to manufacturing facilities, was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods. This program includes a ten percent

initial and a two percent annual tax allowance. According to the responses, Heveafil used this program during the review period.

Because this program, as it applies to warehouses, is limited to exporters, we have preliminarily determined it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program for each company during the review period and divided it by the company's total exports because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.00019 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an industrial building allowance during the review period.

7. Double Deduction for Export Promotion Express

Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once in calculating net income on the financial statement and again in calculating taxable income. According to the responses, only Heveafil used this program during the review period.

Because this program is limited to exporters, we have preliminarily determined it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the review period and divided it by the company's total exports because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.03 percent for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not double deduct export promotion expenses during the review period.

8. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. This ordinance was replaced by the Investment Incentives Act (IIA) in 1968, which was subsequently replaced

by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer products or activities.

Companies petition for pioneer status for pioneer products or activities. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax, the development tax, and the dividend tax for a period of five years with the possibility of an extension for an additional five years. The five-year extension was abolished effective October 1, 1991.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority will consider the following factors: (1) The number of companies already established in the industry and the extent of the development of the industry in the country; (2) the level of manufacturing operation or activity proposed by the project; (3) the level of technology already achieved by the particular industry; (4) the level of local content to be achieved by the project; (5) spin-off effects or benefits of the project; (6) the linkages created or the extent of integration with other industries; and (7) the extent of foreign exchange proposed to be earned by the project.

According to the response, export potential has always been one of the considerations in evaluating a project for pioneer status. Nevertheless, companies that produce only for the domestic market may receive pioneer status. Under certain conditions, however, companies must agree to export 80 percent or more of production to receive pioneer status. According to the response, the 80 percent export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers.

Rubberflex was the only company that used pioneer status during the review period. Rubfil, Filmax, and Filati qualified for the program, but they have not yet begun to use it. While Rubberflex met other requirements for pioneer status, it also had to meet the requirement to export 80 percent of production.

In Carbon Steel Wire Rod from Malaysia: Final Results of Administrative Review (56 FR 14927, April 12, 1991) (Wire Rod), the Department found that pioneer benefits had been approved for over 2,000 companies and almost as many products cutting across numerous industrial

sectors during the period 1980 to 1989. We concluded, therefore, that no industry or group of industries used the program disproportionately and that the pioneer program is not countervailable. The Wire Rod determination, however, did not specifically address the case where companies had to export 80 percent or more of production to qualify for pioneer status.

After considering the implications of this criterion, the Department has decided to view the pioneer program as a two-faceted program. The first facet comprises those instances where one or more of the criteria described above applies, including favorable prospects for export, but where the export criterion does not carry preponderant weight. This facet of the program is what the Department found non-countervailable in Wire Rod.

In cases where pioneer status is conferred on a company because that company agrees to export 80 percent of its production, however, the program conveys an export subsidy, regardless of the other "neutral" criteria the company is required to meet. This is because receipt of benefits becomes contingent on export performance. Therefore, we have preliminarily determined that this facet of the pioneer program bestows an export subsidy.

To calculate the benefit from this program, we determined the total income and development tax savings realized during the review period and divided it by Rubberflex's total exports because these benefits apply to all exports. We then applied the calculation methodology outlined above. On this basis we preliminarily determine the net subsidy from this program to be 4.04 percent *ad valorem* for all manufacturers, producers, and exporters to Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits and received no benefits under this program during the review period.

II. Program for Which we Need More Information

Research and Development

Created in 1958 under the Laws of Malaysia Act 401, the Malaysian Rubber Research Development Board (MRRDB) is a government agency under the auspices of the Ministry of Primary Industries. It was established to oversee research, technical development and promotional work in support of the Malaysian natural rubber industry. The MRRDB operating units include the Rubber Research Institute of Malaysia (RRIM), the Malaysian Rubber Products Research Association (MRPRA), and the

Malaysian Rubber Bureau (MRB). According to the response, the results of all of the research performed by MRRDB units is made available to the public.

Both RRIM and MRPRA operate commercial consulting units. These units provide consulting services related to the manufacture of rubber products. Users of these services are billed on a cost plus basis. On one occasion, Rubberflex had several samples of rubber thread analyzed by MRPRA's Rubber Consultants unit. According to the response, this analysis was the only occasion when any of the respondents used services of a MRRDB unit. Respondents indicate that they have never used any of the research and development facilities or services of MRRDB or its various units other than in this one instance.

Respondents claim that RRIM's consulting units provide services to all users on a cost-plus basis. We intend to seek further information on the nature of the services provided, the amounts charged for these services, the basis for the charges, the profitability of the units, and the amounts charged by private providers for these same services.

III. Programs Preliminarily Determined Not to be Used

- A. *Preferential Financing for Bumiputras*
- B. *Allowances of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales*
- C. *Double Deduction for Export Credit Insurance Payments*
- D. *Investment Tax Allowance*
- E. *Allowance of Taxable Income of Five Percent of the Adjusted Income of Companies Due to Capital Participation/Employment Policies*
- F. *Abatement of Five Percent of Adjusted Income*

IV. Programs Preliminarily Determined Not to Exist

- A. *Preferential Land Pricing*
- B. *Five to Ten Year Tax Holidays*
- C. *Electricity Discount for Rubber-Based Manufacturers*

V. Programs Previously Determined not to be Countervailable

Petitioner included these programs in its petition and we incorrectly included them in our initiation in this investigation. Department practice requires that we not initiate on programs previously found not to be countervailable, unless changes in the program or its administration justify further investigation. In these instances, no information was received about changes in the program. Therefore, we

are rescinding the investigation as it relates to:

- A. *Reinvestment Allowance*
- B. *Accelerated Depreciation Allowance*
- C. *Free Trade Zones*

Preliminary Affirmative Determination of Critical Circumstances

Petitioner alleges that imports of extruded rubber thread from Malaysia present "critical circumstances." On December 17, 1991, respondents requested that the Department terminate the critical circumstances investigation. Because this request was made only three days before the date of our preliminary determination, we have not had sufficient time to fully consider their argument. We will address this issue in our final determination.

Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"); and (2) there have been massive imports of the class or kind of merchandise which is subject of the investigation over a relatively short period.

In our preliminary determination we found that the government of Malaysia confers export subsidies on the manufacture, production or exportation of extruded rubber thread. These subsidies are inconsistent with the Subsidies Code.

In preliminary determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. In making this determination, our preference is to examine company-specific shipment data on exports to the United States of the subject merchandise.

We asked all respondent companies to supply monthly volume and value shipment data from January 1989 to the present. We have not yet received complete data for November shipments.

Based on our analysis of the monthly shipment data for each respondent company, we have found that imports from three of the five companies have been massive over a relatively short period of time. Therefore, we find that the requirement of section 703(e)(1) are met for the following companies

exporting extruded rubber thread to the United States.

Company	Critical circumstances
Heveafil	no
Filmax	yes
Rubberflex	yes
Filati	yes
Rubfil	no

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of extruded rubber thread from Malaysia which are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the publication of this notice in the *Federal Register* and to require a cash deposit or bond for all entries of this merchandise in the following amounts:

Manufacturer/exporter	Net ad valorem subsidy (percent)
Filati Lastex Elastofibre	4.01
Rubfil Sdn. Bhd.	4.21
All other manufacturers or exporters	9.51

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on February 21, 1992, at 10:00 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, room B-099, at the above address within ten days of the publication of this notice in the *Federal Register*. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 355.38(c) and (d), case briefs and rebuttal briefs must be submitted to the Assistant Secretary in ten copies of the business proprietary version and five copies of the nonproprietary version by February 14, 1992, and February 18, 1992, respectively. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.38, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671(b)(f)).

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-31093 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Solicitation for Sea Grant Review Panelists

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: This notice responds to section 209 (c) of the National Sea Grant College Program Act, 33 U.S.C. 112, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by January 29, 1992.

ADDRESS: Dr. David B. Duane, Director, National Sea Grant College Program, 1335 East-West Highway, room 5465, (BH), Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Shephard of the National Sea Grant College Program at the address given above; telephone (301) 713-2431, (FTS) 8-301-713-2431.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a national review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205 and 206, and section 3 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 203 (a) and (c)(1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of fifteen voting members composed as follows:

Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) The director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under Section 205; or

206; or, (c) a full-time officer or employee of the United States.

The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Two positions on the panel will become vacant during 1992. Candidates who are selected to fill these vacancies will be appointed for a three-year term.

Dated: December 18, 1991.

Ned A. Ostenso,

Assistant Administrator, OAR.

[FR Doc. 91-31164 Filed 12-27-91, 8:45 am]

BILLING CODE 3510-12-M

1990 Survey of Atlantic Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NMFS publishes the results of a survey of Atlantic coast striped bass fisheries for 1990, as required by the Atlantic Striped Bass Conservation Act (the Act), to provide information on the status of the fisheries.

ADDRESSES: Copies are available from David G. Deuel, NOAA/NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301-713-2347.

SUPPLEMENTARY INFORMATION: Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1990 Survey Results

Section 6 of the Act (Pub. L. 98-613, 16 U.S.C. 1851) requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey is to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of Atlantic striped bass in the coastal states during the period considered in the survey. The results of each annual survey are to be published in the Federal Register Reauthorization of the Act in 1986 (Pub. L. 99-432), in 1988 (Pub. L. 100-589), and in 1991 (Pub. L. 102-130) extended the requirement for the annual survey. This report presents data for calendar year 1990.

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 through 1991, funds were authorized but not appropriated. Thus, for calendar years 1985 through 1990, no funds were appropriated for conduct of the comprehensive annual

survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, NMFS routinely collects data on all U.S. commercial fisheries and on marine recreational fisheries on the Atlantic and Gulf coasts. In addition, in 1990, several states collected detailed harvest data on their commercial fisheries, based on the need for timely monitoring of the harvest. For these states, state collected data were used. Data from these surveys are used in this report to satisfy the requirements of section 6 of the Act. A description of the statistical survey procedures for the commercial fishery landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1987-1989" (U.S. Department of Commerce, 1991). The Act addresses Atlantic coast striped bass (hereafter referred to as striped bass) from Maine through North Carolina; the data presented here are for the same area.

In 1990, commercial landings of striped bass totaled 823,000 pounds (373.3 mt), an increase of 538,000 pounds (244.0 mt) above the record low landings of 285,000 pounds (129.3 mt) in 1989. The previous record low landings of 335,000 pounds (152.0 mt) was in 1986. Highest landings of 14.7 million pounds (6,667.9 mt) occurred in 1973, but steadily declined at about 20 percent per year through 1989 (Figure 1). Part of the decline from 1982 through 1989 resulted from restrictive regulations on the commercial fishery. In 1990, much of the increase in landings resulted from a relaxation of regulations in the states that allow the commercial harvest of striped bass. Landings, by state, from 1982 through 1990 are shown in Table 1. During 1990, the Chesapeake Bay area (Maryland, Virginia and the Potomac River) accounted for 70 percent of the reported commercial landings, while Massachusetts landings accounted for 18 percent of the total landings of striped bass.

Catch and harvest of striped bass by recreational fishermen have been estimated from the annual Marine Recreational Fishery Statistics Surveys from 1979 through 1990. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish that were removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species that occur more frequently in the catch than for those that occur infrequently. From 1979 through the late 1980's, with the striped

bass stocks at low levels, the estimates for striped bass were less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high interannual variability of striped bass catch estimates by state. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct. In recent years, several of the coastal states have augmented the level of sampling for the survey, which has resulted in an increase in the precision of catch estimates for striped bass. Additionally, as the striped bass stocks have continued to increase, striped bass have occurred more frequently in the catch, resulting in increased precision.

In 1990, recreational fishermen caught an estimated 2,030,000 striped bass, of which 238,000 were harvested; the remaining 1,792,000 were released alive (Table 2). The estimated weight of the 1990 recreational harvest was 2,668,000 pounds (1,201.2 mt). Estimates of the total recreational catch of striped bass, by state, from 1982 through 1990 are shown in Table 3. The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish annually during 1983-1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch from 1986 through 1989 likely reflects the abundance of the 1982 and subsequent year classes, which have received protection by management measures in force since 1985. Additionally, the relaxation of regulations in 1990 resulted in an appreciable increase in catch as well as harvest in most states.

The number of striped bass harvested by recreational fishermen generally declined from about 1.3 million fish in 1979 to 40,000 in 1989, but increased to 238,000 fish in 1990, largely a result of the decrease in minimum size, open seasons and other less restrictive measures. Since the early 1980's, the percentage of the total catch released alive has generally increased. During 1979-1981, an average of 24 percent were released alive; during 1982-1985, an average of 68 percent were released alive; and during 1986-1989, an average of 92 percent of the fish caught were released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass in the recreational fishery. Even in 1990, with regulations eased, 88 percent of the total catch was released alive.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended) (ASMFC Plan), have had a significant impact on the level of the recreational and commercial harvest. Management regulations restricting the harvest of striped bass began in 1982, with those having the most impact being implemented during 1984, 1985, and 1986. The regulations included closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. A moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in the marine waters of New York, Connecticut, and Rhode Island. From 1986 through 1989, a one fish per angler per day bag limit was allowed for the recreational fishery in New York (during the open season) and Rhode Island. Several other states had prohibited sale of striped bass and all states had implemented a 36-inch (91.4-cm) total length minimum-size limit. Bag limits ranged from one to five fish in states that allowed possession of recreationally caught fish.

The revised ASMFC Plan (Amendment 4) was adopted in October 1989. Implementation of a transitional fishery began later that year following the 1989 Maryland juvenile index of 25.2. The 1989 index increased the 3-year average of the Maryland juvenile index above 8.0. This trigger was assumed to represent a level of production that would signal partial recovery of the spawning stocks sufficient to allow a limited increase in commercial and recreational harvests. Amendment 4 of the ASMFC Plan specifies a 28-inch (71.1-cm) minimum-size limit along the coast and an 18-inch (45.7-cm) minimum-size limit in inshore producing areas. The commercial harvest in each state was restricted to 20 percent of the historical harvest from 1972 through 1979, and the recreational bag limit was set at one fish per angler per day. However, states could propose regulations that differ from the basic

provisions of Amendment 4, as long as those regulations met the management objectives of the ASMFC Plan and resulted in a harvest at least as conservative as under the basic provisions. The ASMFC approved fisheries to be conducted during 1990 for each state, the District of Columbia, and the Potomac River Fisheries Commission. This limited level of harvest during 1990 was closely monitored by the states and, if needed, adjustments were to be made for the 1991 season. State regulations in effect for the commercial fisheries during 1990 are summarized in Table 4, and for the recreational fisheries, in Table 5.

During 1990, the ASMFC approved a total harvest (cap) for the commercial fishery of nearly 1.2 million pounds (529.0 mt), while the actual harvest was 823,000 pounds (373.1), or 29 percent less than the cap (Table 6). Most states did not reach the cap, although Virginia and the Potomac River Fisheries Commission exceeded their cap by 25 and 6 percent, respectively.

Historically, appropriate data from which to estimate the relative abundance of striped bass were not collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years, nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly affected by management regulations. Thus, caution should be used in interpreting recent landings data.

Juvenile production is estimated annually based on surveys conducted in striped bass nursery areas in New York, Delaware, Maryland, Virginia and North Carolina. Production of juvenile striped bass in 1987 in the Hudson River, New York, and in the Virginia portion of the Chesapeake Bay reached record highs and remained high during 1988, 1989 and 1990. Production in the Maryland portion of the Chesapeake Bay remained low through 1988, but increased in 1989 to the second highest value (25.2) in the 36-year time series (long term average of

8.9). However, the index in Maryland in 1990 returned again to a low value (2.1). Reproduction in North Carolina has remained low in recent years. In the Delaware River, after many years of very low levels of spawning stocks, recruitment indices have increased steadily since surveys began in 1980.

Historically, spawning areas in Maryland have produced the majority of the striped bass found along the Atlantic coast. While fishing mortality was likely a major factor in the decline of the population, reduced water quality may have also played a role through reduced survival of eggs and/or larval fish. In some spawning rivers in Maryland during some years, larval striped bass exposed to various contaminants and/or low pH levels present in the rivers experienced greater mortality than the larvae exposed to water without contaminants or low pH. Thus, although an increased number of females are now in the spawning population, successful production also will depend on water quality during the spawning season to allow survival of eggs and larval fish.

In the last few years, commercial and recreational fishermen have reported increases in the numbers of striped bass. In addition to these undocumented reports, data obtained from sampling the population show an increased relative abundance of fish from recent year classes (fish born in the same year). This increase supports the hypothesis that high levels of fishing mortality contributed significantly to the severe decline of the striped bass population on the Atlantic coast during the 1970's, and certainly shows that management measures have been effective to date in conserving and rebuilding the striped bass population. Additional information on the status of striped bass populations may be found in the Emergency Striped Bass Research Study Report for 1989 (United States Department of the Interior and United States Department of Commerce, 1991, Washington, DC.).

Dated: December 20, 1991.

David S. Crestin,
Acting Director, Office of Fisheries
Conservation and Management, National
Marine Fisheries Service.

BILLING CODE 3510-22-M

Figure 1. Reported commercial landings (lbs.) of striped bass along the Atlantic Coast, 1962-1990.

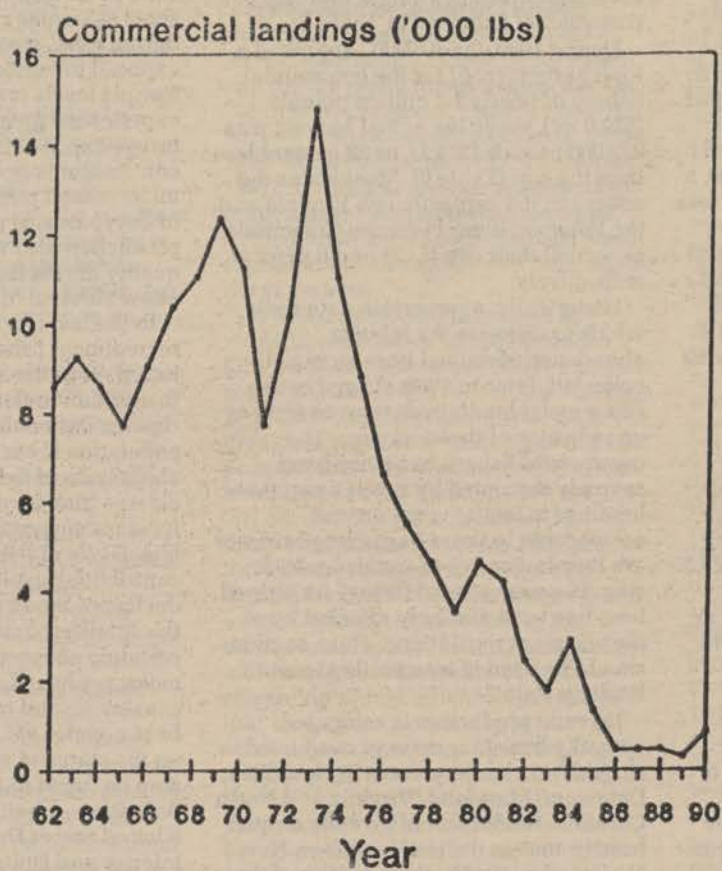


TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1979-1990.

State	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Maine	**	**	1	—	—	—	1	—	—	—	—	—
New Hampshire	—	—	—	—	—	—	—	—	—	—	—	—
Massachusetts	695	886	708	643	224	107	119	96	78	80	172	148
Rhode Island	54	20	235	270	196	54	61	11	1	—	—	—
Connecticut	45	29	5	6	2	2	6	—	—	—	—	—
New York	570	598	822	471	310	595	469	—	—	—	—	82
New Jersey	40	24	14	10	20	9	12	10	—	—	—	—
Delaware	26	17	23	26	7	37	—	—	—	—	—	7
Maryland	859	1,892	1,502	478	379	816	2	—	24	27	—	139
Virginia	267	154	83	54	52	15	60	1	8	62	—	264
PRFC*	288	558	471	134	166	788	222	30	58	115	—	169
North Carolina	614	472	417	338	361	513	280	189	262	115	113	10
Total	3,458	4,650	4,281	2,429	1,717	2,933	1,232	337	431	400	285	823

Sources: National Marine Fisheries Service, F/RE1, unpublished data; some 1990 data are from state agencies. Dash denotes none reported; ** denotes less than 500 pounds.

Note: Restrictive regulations contributed to the decrease in landings since 1981.

*PRFC is the Potomac River Fisheries Commission.

TABLE 2.—ESTIMATED 1990 RECREATIONAL CATCH AND HARVEST OF STRIPED BASS BY JURISDICTION

[Thousands of Fish]

State	Total catch	Harvested	Released	Weight of fish harvested (thousand pounds)
ME ¹	16	3	13	79
NE ¹	15	1	14	16
MA ²	453	18	437	404
RI ¹	82	5	77	79
CT ¹	159	5	154	145
NY ¹	286	26	260	434
NJ ¹	246	57	189	739
DE ¹	18	2	16	21
MD ³	631	75	556	512
PRFC ^{2,4}	64	19	45	81
VA ²	60	29	31	172
NC ^{1,5}	0	0	0	0
Total	2,030	238	1,792	2,676

¹ NMFS Marine Recreational Fishery Statistics Survey for 1990. (J. Witzig, personal communication.)

² Source: NMFS Marine Recreational Fishery Statistics Survey (J. Witzig, personal communication) supplemented by state-collected data.

³ Source: State-collected data.

⁴ PRFC: Potomac River Fisheries Commission.

⁵ Ocean fishery only.

TABLE 3.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1979-1990

State	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Maine	—	—	—	—	—	177	—	—	—	—	—	16
New Hampshire	0	0	—	0	—	0	—	0	—	—	—	15
Massachusetts	66	—	—	129	68	132	123	665	113	302	236	453
Rhode Island	31	—	—	—	—	72	50	—	98	31	47	82
Connecticut	81	42	—	555	45	41	41	—	80	30	111	159
New York	733	59	37	—	36	101	95	149	219	148	376	286
New Jersey	—	—	40	151	210	84	—	43	63	95	287	246
Delaware	—	0	0	0	—	—	—	0	—	—	—	18
Maryland	1,005	377	174	40	155	148	102	502	145	182	152	631
Virginia	—	0	0	0	—	—	—	—	—	36	98	60
PRFC*	—	—	—	—	—	—	—	—	—	—	—	64
North Carolina	57	—	576	0	—	—	—	—	0	—	—	0
Total	2,005	548	892	911	568	626	618	1,399	761	840	1,384	2,030

Estimates include both fish harvested and those released.

— = less than 30,000 reported (prior to 1990).

0 = none reported.

* = PRFC is the Potomac River Fisheries Commission; prior to 1990, catch was included with Maryland and Virginia.

Sources:

1979-1980: USDOC, 1984, Current Fishery Statistics No. 8322.

1981-1982: USDOC, 1985, Current Fishery Statistics No. 8324.

1983-1984: USDOC, 1985, Current Fishery Statistics No. 8326.

1985: USDOC, 1986. Current Fishery Statistics No. 8327
 1986: USDOC, 1987. Current Fishery Statistics No. 8392.
 1987-1989: USDOC, 1991. Current Fishery Statistics No. 8904.
 1990: National Marine Fisheries Service, R. Essig, personal communication, and various state surveys.
 Note: Restrictive regulations contributed to the decrease in landings since 1981

TABLE 4.—SUMMARY OF STATE HARVEST REGULATIONS ON THE COMMERCIAL FISHERY FOR STRIPED BASS FOR 1990

State	Size limits	Cap (1000 lbs.)	Seasons ¹
ME	No fishery		
NH	No fishery		
MA	36" minimum	160	1 Jul-30 Sep.
RI	18" minimum, 26" maximum, (40" maximum for gear other than trap net).	35	
CT	No fishery		
NY	24" minimum, 28" maximum	128	1 Sep-15 Dec.
NJ	No fishery		
PA	No fishery		
DE	28" minimum	34	18 Mar-31 Mar.
MD—Bay & River	18" minimum, 36" maximum	319	12 Nov-31 Jan ¹ (includes all gears).
Ocean	28" minimum	25	2 Jan-31 Jan.
PRFC	18" minimum, 36" maximum	156	Various weeks during Sep., Oct., Nov., & Dec (Total of 52 days).
DC	No fishery		
VA—Bay & River	18" minimum, 36" maximum	211	5 Nov-9 Nov.
Ocean	28" minimum, 36" maximum		
NC—Ocean	28" minimum	96	12 Feb, 19 Feb-23 Feb, 26 Nov-23 Dec.

¹ All seasons are during calendar year 1990, except for Maryland Bay which extended into 1991.

² Caps were reduced by ASMFC to offset the effects of slot limits with minimum size limits less than 28" on coast.

TABLE 5.—SUMMARY OF STATE HARVEST REGULATIONS ON THE RECREATIONAL FISHERY FOR STRIPED BASS FOR 1990.

State	Size Limits	Daily Bag Limits	Seasonal Quota	1990 Seasons
ME	36" Minimum	1	None	Rivers: 1 Jul-30 Nov
NH	36" Minimum	1	None	All Year
MA	36" Minimum	1	None	All Year
RI	28" Minimum	1	None	All Year
CT	36" Minimum	1	None	1 Apr-14 Dec
NY—Hudson River	18" Minimum	1	None	15 Mar-30 Nov
Ocean	36" Minimum	1	None	8 May-31 Dec
NJ—Delaware Bay & Tributaries	36" Minimum	1	None	31 Mar-31 Dec
Other Rivers	28" Minimum	1	None	31 Mar-31 Dec
Ocean	28" Minimum	1	None	All Year
PA	36" Minimum	1	65,000	All Year
DE	28" Minimum	1	None	Delaware River: 1 Jan-31 Mar 1 Jun-31 Dec
MD—Bay & River	18" Minimum, 36" Maximum	2 or 5 (charter)	319,000 lbs.	Spawning area closure 5 Oct-14 Oct
Ocean	28" Minimum	1	113,000 lbs. (charter)	5 Oct-17 Oct (charter)
PRFC	18" Minimum, 36" Maximum	2 or 5 (charter)	57,000 lbs., 14,000 lbs. (charter)	5 Oct-17 Oct
DC	18" Minimum, 36" Maximum	2	None	5 Oct-16 Nov
VA—Bay & River	18" Minimum, 36" Maximum	2	None	5 Nov-5 Dec
Ocean	28" Minimum, 36" Minimum	2	None	All Year
NC—Roanoke ¹	16" Minimum	3	None	12 Feb-18 Mar
Bay & River ¹	14" Minimum	3	None	19 Nov-31 Dec
Ocean	28" Minimum	1		

¹ Striped bass in internal waters of North Carolina are not included under the ASMFC Plan.

TABLE 6.—COMMERCIAL FISHERIES CAP AND COMMERCIAL LANDINGS OF STRIPED BASS IN 1990, BY JURISDICTION

State	Cap(lbs.)	Landings(lbs.)	% Deviation
ME	(¹)		
NH	(¹)		
MA	160,000	148,000	-7
RI	35,000	4,484	-88
CT	(¹)		
NY	128,000	81,872	-36
NJ	(¹)		
DE	33,867	6,509	-79
MD	343,750	138,691	-59

TABLE 6.—COMMERCIAL FISHERIES CAP AND COMMERCIAL LANDINGS OF STRIPED BASS IN 1990, BY JURISDICTION—Continued

State	Cap(lbs.)	Landings(lbs.)	% Deviation
PRFC	158,619	169,060	+6
VA	211,000	264,000	+25
NC	96,000	9,797	-90
Total	1,166,236	822,569	-29

Note—PRFC is the Potomac River Fisheries Commission

¹ No Fishery

[FR Doc. 91-30956 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagics Species Plan Development Team (Team) and Advisory Subpanel will hold a public

meeting on January 22-23, 1992, in Suite 50 of the California Department of Fish and Game office, 330 Golden Shore, Long Beach, CA. The meeting will begin at 9 a.m. on both days.

The purpose of the meeting is to review the history and current status of coastal pelagic species fisheries and plan development, plus pertinent issues, goals and objectives.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 23, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-31009 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Application for Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#42)

Correction

In notice document 91-29727 beginning on page 64768, in the issue of Thursday, December 12, 1991, the subject heading is corrected to read, "Endangered Species; Application for Permit; U.S. Army Corps of Engineers, Waterways Experiment Station (P496)."

Dated: December 23, 1991.

Charles Karnella,

Acting Director, Office of Protected Resources.

[FR Doc. 91-31080 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Issuance of Permit; Ms. Patricia Gerrior, Northeast Fisheries Science Center (P #761)

On July 15, 1991, notice was published in the *Federal Register* (54 FR 41132) that an application had been filed by Ms. Patricia Gerrior, of the Woods Hole Laboratories, Northeast Fisheries Science Center, National Marine Fisheries Service (NMFS), 166 Water Street, Woods Hole, Massachusetts 02543 for a permit to take turtles captured incidental to commercial fishing operations for scientific research. Onboard observers may collect up to 10 green turtles (*Chelonia mydas*), 60 loggerhead turtles (*Caretta caretta*), 10 hawksbill turtles (*Eretmochelys imbricata*), 10 leatherback turtles (*Dermochelys coriacea*), and 10 Kemp's Ridley turtles (*Lepidochelys kempi*) to

measure, photograph, collect blood samples as required, tag, and release or retain as necessary for rehabilitation.

Notice is hereby given that on December 19, 1991, as authorized by the provisions of the Endangered Species Act of 1973 (ESA), NMFS issued a permit for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA of 1973, is based on the finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with, and is subject to, parts 220-222 of title 50 CFR, of NMFS regulations governing endangered species permits.

The permit is available for review in the following offices: The Office of Protected Resources, NMFS, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: December 19, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-31165 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for scientific research permit (P475).

Notice is hereby given that Ms. Dena R. Matkin, Gustavus, AK 99826, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Species and type of take: The applicant is requesting authorization to harass annually, over a five-year period, up to five times each, up to 150 killer whales (*Orcinus orca*) during photo-identification studies. The purposes of the proposed research are to: continue the applicant's long-term photo-identification of killer whales that utilize the southeastern Alaska ecosystem; determine pod composition and cohesiveness; define within-pod affiliations; and assess the effects of the Prince William Sound oil spill on habitat

use by killer whales in southeastern Alaska.

Location of activity: The activities will occur in all of southeastern Alaska with an emphasis on Lynn Canal, Chatham Strait, and Frederick Sound regions.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices.

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713-2289).

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/568-7221); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115 (206/526-4020).

Dated: December 20, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-31030 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Issuance of Marine Mammal Permit (P492).

On November 5, 1991, notice was published in the *Federal Register* (56 FR

56504) that an application had been filed by Dr. Graham A.J. Worthy, Assistant Professor of Marine Mammalogy, Department of Marine Biology, Texas A&M University at Galveston, 4700 Avenue, U, Galveston, TX 77551-5932, to import blubber samples obtained from up to twenty (20) individuals of each of the following species: Commerson's dolphin (*Cephalorhynchus commersoni*), common dolphin (*Delphinus delphis*), dusky dolphin (*Lagenorhynchus obscurus*), spectacled porpoise (*Phocoena dioptrica*), harbor porpoise (*Phocoena phocoena*), Burmeister's porpoise (*Phocoena spinipinnis*), vaquita cochito (*Phocoena sinus*), Indo-Pacific humpbacked dolphin (*Sousa chinensis*), and bottlenose dolphin (*Tursiops truncatus*), which were either found stranded or were caught incidentally in a commercial fishery. The specimen materials will be imported from Argentina, eastern Canada, South Africa, Western Australia, New Zealand and Mexico, over a five-year period.

Notice is hereby given that on December 20, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above importation, subject to certain conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

Issuance of this Permit for the importation of Vaquita (*Phocoena sinus*) as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was plied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this permit are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/713-2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (313/893-3141).

Dated: December 20, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-31031 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-22-M

Technology Administration

National Medal of Technology Nomination Evaluation Committee

AGENCY: Technology Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on September 16, 1991.

The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters concerned with applying the criteria for determining the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

TIME AND PLACE: The meeting will begin at 10 a.m. and end at 3 p.m. on January 15, 1992. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 4418, Washington, DC 20230, (202) 377-5572.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552(c)(4) and (6) was approved by the Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Counsel on (December 1991), in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade

secrets and commercial or financial information obtained from a person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 6628, Washington, D.C. 20230. (202) 377-4210.

Date: December 23, 1991.

Deborah Winice-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91-31096 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-18-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a serve to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 29, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing the blind or other severely disabled individuals.

It is proposed to add the following serve to the procurement list: Janitorial/Custodial, Oregon Air National Guard Base, Reserve Buildings, Portland, Oregon.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-3116 Filed 12-27-91; 8:45 am]

BILLING CODE 5820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 29, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 13, 27, October 25, November 1 and December 9, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 46602, 49177, 55288, 56200 and 57323) of proposed additions to the procurement list. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and services listed.
- The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Arming Adaptor, Self-Adjusting
1325-01-158-8635
Roll, Tools and Accessories
5140-00-106-5616
Flag, Signal, Combat Vehicle
8345-00-227-1405
8345-00-227-1511
Hood, Combat Vehicle Crewman's
8415-01-111-1159

Services

Embroidery of Name and Service Tapes
U.S. Marine Corps
Arlington, Virginia
Janitorial/Custodial
U.S. Courthouse
Pensacola, Florida
Janitorial/Custodial
Lawrence County Veterans Memorial
USARC
533 Taylor Street
New Castle, Pennsylvania
Janitorial/Custodial
Federal Building
1st and Oak Streets
Port Angeles, Washington

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-31171 Filed 12-27-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Policy Board Advisory Committee**

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on the Future of American Nuclear Forces will meet in closed session on 8 January 1992 from 0800 until 1600 and 9 January 1992 from 0800 until 1200 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-462, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: December 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31024 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee (SDIAC)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The SDIAC will meet in closed session in Washington, DC, on January 9-10, 1992.

The mission of the SDIAC is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meetings on January 9-10, 1992, the committee will discuss Initial Deployment plans, review the Third World Threat report, and review Architecture Integration update.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C., app. II, (1982)), it has been determined that this SDIAC meeting concerns matters listed in 5 U.S.C., 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: December 23, 1991.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31025 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-01-M

Women in Services Advisory Committee; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the committee at the DACOWITS 1991 Fall Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1992 Spring Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: February 10, 1992, 8:30 a.m.-4 p.m..

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Captain Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769,

Washington, DC 20301-4000; telephone (703) 697-2122.

Dated: December 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31026 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Exclusive Patent License

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant exclusive patent license; U.S. Alcohol Testing of America, Inc.

SUMMARY: The notice in the *Federal Register*, Vol. 56, No. 216, at page 56991 on November 7, 1991 was partially incomplete. The first sentence of the **SUMMARY** should have read as follows: The Department of the Navy hereby gives notice of its intent to grant to U.S. Alcohol Testing of America, Inc. a revocable, nonassignable, exclusive license in the United States and certain foreign countries to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/486,024, "Flow Immunosensor Method and Apparatus" filed February 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: December 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U. S. Naval Reserve, Alternate Federal Register Liaison Officer

[FR Doc. 91-31101 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Education

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Accreditation and Institutional Eligibility. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: February 3-5, 1992, 8:30 a.m.-5 p.m..

LOCATION: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation, and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW., room 3915-ROB#3, Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is established under section 1205 of the Higher Education Act as amended by Public Law 93-374 (20 U.S.C. 1145).

The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary of Education on policy matters concerning recognition of accrediting and State approval bodies and institutional eligibility for participation in Federally funded programs.

AGENDA: The meeting on February 3-5, 1992 is open to the public. The Advisory Committee will continue its consideration of issues concerning the relationship of accreditation to eligibility for Federal student financial assistance. The Committee will also review petitions and interim reports of accrediting agencies and State approval bodies relative to initial or continued recognition by the Secretary of Education. Subject to time constraints, the Committee will hear presentations by representatives of these petitioning agencies and third parties who have requested to be heard. The following petitions and interim reports are scheduled for review:

Accrediting Agencies

Petition for Initial Recognition

American Association of Higher Education in Oriental Medicine, Accrediting Commission (institutions and programs offering master's degrees in traditional Oriental medicine).

Petitions for Renewal of Recognition

1. Accreditation Board for Engineering and Technology, Inc. (basic [baccalaureate] and advanced [master's] level programs in engineering, associate and baccalaureate degree

programs in engineering technology, and engineering-related programs at the baccalaureate level).

2. Accreditation Board of Funeral Service Education, Committee on Accreditation (independent schools and collegiate departments).

3. American Library Association, Committee on Accreditation (master's programs leading to the first professional degree).

4. American Society of Landscape Architects, Landscape Architectural Accreditation Board (baccalaureate and master's programs leading to the first professional degree).

5. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (advanced rabbinical and Talmudic Schools).

6. Council on Chiropractic Education, Commission on Accreditation (programs leading to the D.C. degree).

7. Council on Education for Public Health (graduate schools of public health and graduate programs offered outside schools of public health in community health education and in community health/preventive medicine).

8. Council on Social Work Education, Commission on Accreditation (master's and baccalaureate degree programs).

9. Foundation on Interior Design Education Research, Committee on Accreditation (two-year preprofessional assistant level programs (certificate and associate degree), first professional degree level programs (master's and baccalaureate degree and three-year certificate) and post-professional master's degree programs).

10. Middle States Association of Colleges and Schools, Commission on Higher Education (Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands).

11. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (specialized schools for the blind and visually handicapped, including organizations providing postsecondary vocational education programs that prepare the blind and visually handicapped for employment).

12. National Accrediting Commission of Cosmetology Arts and Sciences (postsecondary schools and department of cosmetology arts and sciences).

13. National Association of Industrial Technology (baccalaureate degree programs).

14. National Association of Schools of Art and Design, Commission on Accreditation (degree-granting schools and departments of non-degree granting schools that are predominantly organized to offer education in art,

design, or art/design related disciplines).

15. National Association of Schools of Music, Commission on Accreditation (institutions and units within institutions offering degree granting and non-degree granting programs in music and music-related disciplines including community/junior colleges and independent degree-granting institutions).

Request for Expansion of Scope of Recognition

National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (from first professional master's degree and professional master's level certificate and diploma programs in acupuncture, to first professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine)

Interim Reports

1. Accrediting Bureau of Health Education Schools (private, postsecondary institutions offering allied health education).

2. American College for Nurse-Midwives (basic certificate and basic master's degree nurse-midwifery educational programs).

3. American Council on Pharmaceutical Education (professional degree programs).

4. American Culinary Federation Educational Institute, Accrediting Commission (postsecondary programs in culinary arts and foodservice management which award certificates, diplomas or associate degrees).

5. American Osteopathic Association, Bureau of Professional Education (programs leading to the D.O. degree).

6. Career College Association, Accrediting Commission for Independent Colleges and Schools (formerly Association of Independent Colleges and Schools) (private, postsecondary schools, junior colleges, and senior colleges that are predominantly organized to educate students for business careers, including master's degree programs in senior colleges of business).

7. Career College Association, Accrediting Commission for Trade and Technical Schools (formerly National Association of Trade and Technical Schools) (private, postsecondary degree and non-degree-granting institutions that are predominantly organized to educate students for trade, occupational, or technical careers).

8. National Architectural Accrediting Board, Inc. (first professional degree programs)

9. National Home Study Council, Accrediting Commission (home study schools (including associate, baccalaureate, or master's degree-granting home study schools).

9. National Home Study Council, Accrediting Commission (home study schools (including associate, baccalaureate, or master's degree-granting home study schools).

10. National League for Nursing, Inc. (programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs).

11. New York State Board of Regents (registration [accreditation] of collegiate degree-granting programs or curriculums offered by institutions of higher education and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education).

12. Southern Association of Colleges and Schools, Commission on Colleges (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia).

13. Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

14. United States Catholic Conference, Commission on Certification and Accreditation (centers/programs, including those that offer clinical pastoral education, that award certificates, baccalaureate and master's degrees for training for specialized ministries in the Catholic Church).

State Approval Agencies

Interim Reports

1. Colorado Board of Nursing
2. New York State Board of Regents
3. Office of the Superintendent of Public Instruction, State of Washington
4. Utah State Board of Vocational Education

Request for Voluntary Withdrawal of Recognition as a State Approval Agency

1. Delaware State Board of Education
2. Iowa State Department of Education

Requests for oral presentation before the Advisory Committee should be submitted to Mr. Pappas (address above) by January 15, 1992. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the proceeding of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland

Avenue, SW., (room 3036 ROB#3), Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Authority: 5 U.S.C.A. Appendix 2.
Carolyn Reid-Wallace,
Assistant Secretary for Postsecondary Education.
[FR Doc. 91-31131 Filed 12-27-91; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reporting and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: January 7, 1992.

TIME: 11 a.m. (e.t.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC., 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(f) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and

establishing standards and procedures for interstate and national comparisons.

The Reporting and Dissemination Committee of the National Assessment Governing Board will meet via teleconference on January 7, 1992. The proposed agenda includes three items: (1) Review of plans for release of two new NAEP reports; (2) discussion of plans for preparation and dissemination of booklets describing the content frameworks of 1992 and 1994 NAEP assessments; and (3) discussion of actions and plans for solicitation of written comments, surveys, and focus groups to evaluate the usefulness and impact of reporting 1990 mathematics results in terms of achievement levels.

Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: December 23, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91-31086 Filed 12-27-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF91-233-001, et al.]

Orlando CoGen Limited, L.P., et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Orlando CoGen Limited, L.P.

[Docket No. QF91-233-001]

December 18, 1991.

On December 10, 1991, Orlando CoGen Limited, L.P. (Applicant) of 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195-1501, submitted for filing an application for certification of a facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Orange County, Florida, and will consist of a combustion turbine generator, a heat recovery boiler and an extraction/condensing steam turbine generator. Steam recovered from the steam turbine

generator will be used for refrigeration by the Air Products Manufacturing Corporation. The maximum net electric power production capacity of the facility will be 122.7 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence by September of 1992.

Comment date: 30 days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

2. Montenay-Dade, Ltd.

[Docket No. QF81-19-001]

December 17, 1991.

On December 9, 1991, Montenay-Dade, Ltd., a Florida limited partnership, c/o Montenay Power Corp., 3225 Aviation Avenue, 4th Floor, Miami, Florida 33133, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Dade County, Florida. The facility will include two steam turbine generators and two boilers. The maximum net electric power production capacity of the facility will be approximately 62.6 MW. The primary source of energy will be biomass in the form of municipal solid waste.

Comment date: 30 days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

3. Bonneville Yuma Corporation

[Docket No. QF90-143-000]

December 18, 1991.

On December 5, 1991, Bonneville Yuma Corporation tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure of the cogeneration facility.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. AES CB Limited Partnership

[Docket No. QE89-126-003]

December 18, 1991.

On December 9, 1991, AES CB Limited Partnership tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership structure and economic viability of the cogeneration facility.

Comment date: January 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER92-58-000]

December 18, 1991.

Take notice that on December 10, 1991, El Paso Electric Company (EPE) filed an amendment to the contract filed on October 7, 1991 in the above named docket. The amendment, suggested by Staff, revises the pricing provisions in Service Schedule A applicable to sales of economy energy. EPE continues to request that the filing be made effective on June 28, 1991.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. UNITIL Power Corp.

December 18, 1991.

[Docket No. ER92-221-000]

Take notice that on December 10, 1991, UNITIL Power Corp. (UNITIL Power) tendered for filing a Notice of Cancellation of Service Agreement No. 4 to its FERC Electric Tariff, Original Volume No. 1.

UNITIL Power states that the Notice of Cancellation has been mailed to the only affected purchaser, Central Vermont Public Service Corporation.

UNITIL Power requests a waiver of notice to permit the Notice of Cancellation to be effective November 1, 1991, in accordance with the Service Agreement.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Baltimore Gas and Electric Company

December 18, 1991.

[Docket No. ER92-220-000]

Take notice that on December 11, 1991, Baltimore Gas and Electric Company (BG&E) tendered for filing, as an initial rate schedule, an agreement between BG&E and the Public Service Electric and Gas Company (PSE&G) reflecting BG&E's sale to PSE&G of up to 100% BG&E's entitlement for the use of Pennsylvania-New Jersey-Maryland Interconnection (PJM) transmission system which is used to import energy from Systems to the west of PJM at a rate of up to \$5.50 MWH commencing February 10, 1992. PSE&G has concurred in this rate schedule by its execution of the agreement. BG&E requests the Commission allow the rate schedule to become effective February 10, 1992.

Comment date: January 3, 1992, in accordance with Standard Paragraph E end of this notice.

8. Central Vermont Public Service Corporation

December 18, 1991.

[Docket No. ER92-145-000]

Take notice that Central Vermont Public Service Corporation on December 13, 1991, tendered for filing an amendment to the letter agreement in this docket that reduces the quantity of power sold to the Village of Enosburg Falls.

Central Vermont requests that the Commission waive its notice requirements to allow the amendment to become effective on December 1, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

December 18, 1991.

[Docket No. ER92-43-000]

Take notice that on December 13, 1991, Southern Indiana Gas and Electric Company (Southern Indiana) tendered for filing an Addendum to its filing of October 7, 1991, for a change in its rate schedule FPC-29 under which it sells standby electrical power to ALCOA Generating Corporation (AGC). The original change filing is in pricing calculation methodology and will result in no rate increase or decrease or revenue change. Southern Indiana has requested a waiver of the minimum 60 day notice requirement. The Addendum sets a floor and ceiling on Southern Indiana's recovery. The only affected customer is the purchaser. Southern Indiana and AGC are parties to a written Letter Agreement executed on August 1, 1991, for the service.

The reason for the Letter Agreement and included change in the rate schedule is to simplify pricing and reduce significant monthly fluctuations in the cost per KWH experienced with the prior methodology, which is expected to be rectified by the new system average methodology. The Agreement is therefore mutually beneficial. The Addendum does not materially affect the original filing except to set a floor and ceiling on recovery by Southern Indiana which Southern Indiana does not anticipate will alter the mutual benefits.

A copy of the filing has been served upon AGC.

Comment date: January 3, 1992, in accordance with Standard Paragraph E end of this notice.

10. UNITIL Power Corp.

December 18, 1991.

[Docket No. ER92-89-000]

Take notice that on December 12, 1991, UNITIL Power Corp. (UNITIL Power) filed with the Commission Notice of Cancellation for three Service Agreements for short-term sales under its FERC Electric Tariff, Original Volume No. 1. The three Service Agreements were filed with the Commission in this docket on October 7, 1991. UNITIL Power states that it is submitting the Notices of Cancellation to supplement its October 7 filing, and that notice of the proposed cancellation has been mailed to each affected purchaser.

UNITIL Power requests a waiver of notice to permit the Notices of Cancellation to be effective in accordance with their terms, which correspond to the termination dates set forth in the Service Agreements.

A copy of UNITIL Power's supplemental filing has been served on each person on the official service list in this proceeding.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

December 18, 1991.

[Docket No. ER90-315-003]

Take notice that on December 10, 1991, Duke Power tendered for filing its compliance refund report pursuant to the Commission's Letter Order dated October 9, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Orange and Rockland Utilities, Inc.

December 18, 1991.

[Docket No. ER92-219-000]

Take notice that December 11, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing a one year extension dated November 27, 1991, to an agreement between Orange and Rockland and New York Power Authority (Authority) for the sale of system capacity and/or energy by Orange and Rockland to Authority.

Orange and Rockland requests waiver of the notice requirements of § 35.13 of the Commission's regulations so that the proposed extension can be made effective December 1, 1991 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of this filing was served on New York Power Authority.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

December 18, 1991.

[Docket No. ER92-223-000]

Take notice that December 11, 1991, Arizona Public Service Company (Arizona) tendered for filing revised contract, maximum and/or estimated demand Exhibits applicable under the following rate schedules:

FPC/FERC No.	Customer	Exhibit name
52	Tohono O'odham Utility Authority.	Exhibit t.
58	Wellton-Mohawk Irrigation District.	Exhibit B.
120	Southern California Edison Company.	Exhibit B.
142	McMullen Valley Water Conservation and Drainage District.	Exhibit "II"

The proposed rate levels are unaffected, revenue levels are unchanged or less than those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are inquired as a result of these revisions.

A copy of this filing has been served on the above customers, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Cincinnati Gas & Electric Company

December 18, 1991.

[Docket No. ER92-33-000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) on December 13, 1991, tendered for filing an amendment to its filing in this docket, in response to various items identified in a deficiency letter dated November 27, 1991.

Copies of the amendment were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley, and Lebanon municipalities in the State of Ohio; and The Union Light, Heat and Power Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the

Commonwealth of Kentucky; and The West Harrison Gas and Electric Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission; the Indiana Utility Regulatory Commission; the Cities of Newport, Covington, and Erlanger, Kentucky; and the Municipal Government League of Northern Kentucky, Inc.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Minnesota Power & Light Company
December 18, 1991.

[Docket No. ER91-532-000]

Take notice that on December 9, 1991, Minnesota Power & Light Company (Minnesota Power) tendered for filing supplemental cost support information concerning a Transmission Services Agreement, dated July 1, 1991, with Cyprus Silver Pay Power Corporation (Cyprus).

Minnesota Power again requests waiver of the Commission's notice requirements and an effective date of July 1, 1991.

Copies of this filing have been served on Cyprus, the Minnesota Public Utilities Commission, and the Minnesota Department of Public Service.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Hampshire

December 18, 1991.

[Docket No. ER92-224-000]

Take notice that Public Service Company of New Hampshire (PSNH) on December 13, 1991, tendered for filing as an initial rate schedule an agreement between it and Central Vermont Public Service Corporation (Central Vermont) nominated, Purchase Agreement With Respect to Newington and dated as of December 1, 1991. The agreement provides for the sale by PSNH to Central Vermont of capability and energy from the Newington generating unit along with non-firm transmission service for delivery.

PSNH asks the Commission to waive its customary notice period and allow the agreement to become effective December 1, 1991. The agreement has been executed by PSNH and Central Vermont and copies have been delivered to the customer and the public service commissions of New Hampshire and Vermont.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corporation

December 18, 1991.

[Docket No. ER91-573-000]

Take notice that on December 13, 1991, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Notice of Termination of Rate Schedule FERC No. 156. Central Vermont requests an effective date of October 1, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Missouri Public Service Company

December 18, 1991.

[Docket No. ER91-682-000]

Take notice that on December 6, 1991, Missouri Public Service Company (Missouri) tendered for filing supplemental cost support information in the above-referenced docket.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31051 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10359-003 Washington]

Snoqualmie River Hydro; Availability of Environmental Assessment

December 23, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's)

regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Youngs Creek Hydroelectric Project located on the Youngs Creek in Snohomish County, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 1000, of the Commission's office at 825 North Capitol Street, NE., Washington, DC 20426.

Lois Cashell,

Secretary.

[FR Doc. 91-31044 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2645-029, et al.]

Niagara Mohawk Power Corp., et al.; Relicensing of Hydroelectric Projects

December 13, 1991.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Project No. 2645-029]

Take notice that on November 29, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the Beaver River Hydroelectric Project No. 2645-029.

The Beaver River Project is located on the Beaver River, in Herkimer and Lewis Counties, New York. The project consists of 8 existing developments, with an installed capacity of 45.122 MW. The licensee proposes to install a minimum flow unit adding 210 kW of installed capacity to the Eagle Development and to redevelop the Belfort development by replacing the intake, penstocks powerhouse, and tailrace and increasing installed capacity by 1.11 MW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

2. Central Maine Power Co.

[Project No. 2325-000]

December 13, 1991.

Take notice that on November 20, 1991, the Central Maine Power Company filed an application to relicense the Weston Hydroelectric Project No. 2325.

The Weston Project is located on the Kennebec River, in Somerset County, Maine. The project consists of two dams (the 529.5-foot-long and 38-foot-high North Channel Dam and the 391.6-foot-long and 51-foot-high South Channel Dam) that were constructed on the north and south channels of the Kennebec River where the river is divided by an island, a 930-acre reservoir, and a powerhouse with an existing installed capacity of 12,000 kW. The licensee proposes the rewinding of the generators to increase the project capacity to 14,750 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

3. Finch, Pruyn and Co., Inc.

[Project No. 2385-000]

December 13, 1991.

Take notice that on December 4, 1991, Finch, Pruyn and Company, Inc., filed an application to relicense the Glen Falls Hydroelectric Project No. 2385.

The Glen Falls Project is located on the Hudson River, in Warren and Saratoga Counties, New York. The project consists of a 450-foot-long and 11-foot-high dam, a 167-acre reservoir, and a powerhouse with an existing installed capacity of 12,090 kW. The licensee proposes the construction of a new headgate structure and rewinding of the generators to increase the project capacity to 12,700 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

4. Central Maine Power Co.

[Project No. 2552-000]

December 13, 1991.

Take notice that on November 26, 1991, the Central Maine Power Company filed an application to relicense the Fort Halifax Hydroelectric Project No. 2552.

The Fort Halifax Project is located on the Sebasticook River, in Kennebec County, Maine. The project consists of a 352-foot-long Ambursen Dam (spillway section), a 417-acre reservoir, and a powerhouse with an installed capacity of 1,500 kW. The licensee proposes no changes in operation or new construction for the project. The current

operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

5. Central Maine Power Co.

[Project No. 2519-000]

December 13, 1991.

Take notice that on November 12, 1991, the Central Maine Power Company filed an application to relicense the North Gorham Hydroelectric Project No. 2519.

The North Gorham Project is located on the Presumpscot River, in Cumberland County, Maine. The project consists of a 970.7-foot-long and 24-foot-long and 24-foot-high stone and concrete dam, a 98-acre reservoir, and a powerhouse with an installed capacity of 2,250 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

6. Wisconsin Electric Power Co.

[Project No. 2431-000]

December 13, 1991.

Take notice that on December 2, 1991, the Wisconsin Electric Power Company filed an application to relicense the Brule Hydroelectric Project No. 2431.

The Brule Project is located on the Brule River, in Florence County, Wisconsin and Iron County, Michigan. The project consists of a 139-foot-long concrete spillway with eight tainter gates, a 532-acre reservoir, and a powerhouse with an installed capacity of 5,335 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

7. Central Maine Power Co.

[Project No. 2555-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Automatic Hydroelectric Project No. 2555.

The Automatic Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a concrete gravity dam, a 68-acre reservoir, and a powerhouse with an installed capacity of 800 kW. The

licensee proposes no major changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

8. Central Maine Power Co.

[Project No. 2556-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Union Gas Hydroelectric Project No. 2556.

The Union Gas Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a stone masonry gravity dam, a 25-acre reservoir, and a powerhouse with an installed capacity of 1.5 MW. The licensee proposes no major changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

9. Central Maine Power Co.

[Project No. 2557-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Rice Rips Hydroelectric Project No. 2557.

The Rice Rips Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a concrete Ambursen dam, a 87-acre reservoir, and a powerhouse with an installed capacity of 1.6 MW. The licensee proposes no major changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

10. Central Maine Power Co.

[Project No. 2559-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Oakland Hydroelectric Project No. 2559.

The Oakland Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a concrete gravity dam with a 10-acre reservoir, a concrete and masonry gravity dam with a 3,600-acre reservoir, and a powerhouse with an installed capacity of 2.8 MW. The licensee proposes no major changes in operation or new construction for the project. The

current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

11. Niagara Mohawk Power Corp.

[Project No. 2569-004]

December 16, 1991.

Take notice that on November 29, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the Black River Hydroelectric Project No. 2569-004.

The Black River Project is located on the Black River, in Jefferson County, New York. The project consists of 5 existing developments, with an installed capacity of 29.6 MW. The licensee proposes to add 2 new generating units to the Sewallis Powerhouse adding 1.2 MW of installed capacity. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

12. Niagara Mohawk Power Corp.

[Project No. 2474-004]

December 16, 1991.

Take notice that on December 6, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the Oswego River Hydroelectric Project No. 2474-004.

The Oswego River Project is located on the Oswego River, in Oswego County, New York. The project consists of 3 existing developments, with an installed capacity of 18.05 MW. The licensee proposes to rewind and refurbish the turbine/generators at the Varick and Minetto developments to increase the installed capacity by 4.7 MW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

13. Central Maine Power Co.

[Project No. 2329-005 New York]

December 17, 1991.

Take notice that on December 10, 1991, the Central Maine Power Company filed an application to relicense the Wyman Hydroelectric Project No. 2329-005.

The Wyman Project is located on the Kennebec River, in Somerset County, Maine. The project consists of an 84-foot-high dam, a 3,240-acre reservoir, and powerhouse with an installed capacity of 72 MW. The licensee proposes no changes in operation or new construction for the project. The

current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

14. Central Maine Power Co.

[Project No. 2283-005 New York]

December 17, 1991.

Take notice that on December 10, 1991, the Central Maine Power Company filed an application to relicense the Gulf Island—Deer Rips Hydroelectric Project No. 2283-005.

The Gulf Island—Deer Rips Project is located on the Androscoggin River, in Androscoggin County, Maine. The project consists of three developments with an installed capacity of 32.67 MW. The licensee proposes to increase the installed capacity at the Gulf Island Development by replacing the turbine runners and rewinding unit two. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

Standard Paragraph

L. Any resource agency, Indian tribe, or person believing that additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with section 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31649 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Dockets Nos. CP92-230-000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP92-230-000]

December 16, 1991.

Take notice that on December 11, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-230-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap to Koch Industries, Inc.

(Koch) under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to construct a delivery tap on its 24-inch Farmington "B" line in Dakota County, Minnesota and metering and appurtenant facilities at Koch's Rosemount Refinery in Rosemount County, Minnesota. Northern states that it would also construct approximately 4.5 miles of 12-inch pipeline from the tap to the metering facilities pursuant to subpart F of part 157 of the Commission's Regulations.

Northern further states that it would use the facilities to deliver natural gas transported for Koch pursuant to subpart G of part 284 of the Commission's Regulations to Koch's Rosemount Refinery.

Northern estimates the volumes of natural gas to be delivered through the proposed facilities to be 46,500 Mcf on a peak day and 13,300,000 Mcf annually.

Northern further states that it is currently providing services to Peoples Natural Gas Company, Division of Utilicorp United Inc., for resale to Koch's Rosemount Refinery. Northern asserts that Koch is expanding its facilities and that the present natural gas volumes and pressures would be insufficient to provide for future deliverability requirements.

Comment date: January 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Transwestern Pipeline Company

[Docket No. CP92-207-000]

December 16, 1991

Take notice that on November 22, 1991, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-207-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Continental Natural Gas, Inc. (Continental) certain pipeline, compression, measurement and appurtenant facilities, hereinafter referred to as the "Mocane System," located in Beaver County, Oklahoma. Transwestern also requests that the Commission authorize: The amendment of Transwestern's certificate authorization of an exchange between Transwestern and El Paso Natural Gas Company (El Paso) to remove a balancing point; and the abandonment of certificated gas sales by certain producers to Transwestern and its

related gas purchases, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Mocane System consists of approximately 54 miles of 2 to 8-inch diameter pipeline, 24 meter stations, the U.S. Allen No. 1 Compressor Unit No. 809 (Compressor Unit No. 809) and Compressor Unit No. 729. Transwestern states that the Mocane System gathers natural gas from 24 wells in the Mocane, Elmwood, Laverne and Camp Creek fields and currently delivers gas into low pressure gathering lines owned by Northern Natural Gas Company (Northern) and Continental. It is further stated that the Mocane System is connected to Transwestern's high pressure 12-inch Lipscomb Mocane Lateral (12-inch Lipscomb Lateral), but can't deliver gas into that lateral due to the pressure differential.

Transwestern states that it commenced construction of the Mocane System in 1960 under Docket No. G-20464 to purchase system supply gas and subsequently built additional gathering lines and meter stations to attach additional wells. It is stated that Compressor Unit No. 809, authorized in Docket No. G-20464 and installed to compress natural gas delivered into Transwestern's 12-inch Lipscomb Lateral, was abandoned by authorization granted in Docket No. CP90-521-000. It is also stated that to comply with the recommendation in the environmental assessment of the abandonment order, Compressor Unit No. 809 will be left on site. It is further stated that Compressor Unit No. 729, authorized in Docket No. CP80-132-000, was installed to increase deliverability from the 6-inch Hancock Lateral.

Transwestern states that it has existing interconnection facilities that have been used for the transportation and exchange of gas with Panhandle Eastern Pipeline Company (Panhandle), El Paso (facilities now owned by Continental) and Northern which are included in the Mocane System facilities to be sold to Continental.

Transwestern submits that it hasn't used its interconnection point with Panhandle, at which gas was exchanged, since the April 1, 1989 termination of a Gas Exchange Agreement dated December 1, 1960.

It is stated that Transwestern and El Paso were authorized in Docket Nos. CP61-299 and CP61-265, respectively, to exchange gas in various counties in Texas and Oklahoma and to construct and operate certain facilities in Beaver County, Oklahoma to permit the exchange of gas. Transwestern states

that part 284 interruptible transportation service pursuant to Docket No. CP91-32-000 has been provided to Continental at an interconnect Continental purchased from El Paso. Transwestern requests authorization pursuant to section 7(c) of the NGA to amend the certificate authorization granted in Docket No. CP61-299 to remove a balancing point located at the intersection of its and El Paso's pipelines in Beaver County, Oklahoma and will revise Rate Schedule X-1 of its FERC Gas Tariff Original Volume No. 2, upon approval of this application.

Also, it is stated that Transwestern and Northern were authorized in Docket Nos. CP63-290 and CP63-291, respectively, to install and operate facilities in Hutchinson County, Texas and Beaver County, Oklahoma and exchanged gas until authorization ended June 30, 1970. According to Transwestern, Northern currently provides it interruptible transportation service under Part 284.

According to Transwestern, it's remaining active gas purchase contracts allow for their unilateral assignment. Transwestern states it notified each of its producers of its intention to assign its contracts to Continental upon sale of the Mocane System. Transwestern requests abandonment authorization to its producer-suppliers of the certificated sales to Transwestern, and to Transwestern of its listed certificated gas purchases.

Transwestern states that while it still purchases some system gas from fields attached to the Mocane System, the total supply has decreased and that because of a decline in field pressures, gas volumes from the Mocane System must flow into lower pressure gathering lines, rather than directly into Transwestern's system. Transwestern reports it has limited operational flexibility from the Mocane System because it depends on other companies to transport the gas. Transwestern states that it no longer buys sufficient quantities of gas from the Mocane System to efficiently use its pipeline and related facilities and that upon receiving abandonment authorization it intends to assign its remaining gas purchase contracts in the Mocane System to Continental. Transwestern avers that abandonment by sale to Continental won't impair its existing service obligations nor impact the production and delivery of remaining reserves from the Mocane System wells. Transwestern submits that authorizing this abandonment will promote more efficient use of the Mocane System since Continental will be able to arrange for

new purchases and attach additional wells.

Comment date: January 6, 1992, in accordance with Standard Paragraph F at the end of this notice

3. Phillips 66 Natural Gas Company

[Docket No. CI92-12-000]

December 17, 1991.

Take notice that on November 21, 1991, Phillips 66 Natural Gas Company (Phillips 66), Bartlesville, Oklahoma 74004, successor in interest to Phillips Petroleum Company, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization permitting and approving the abandonment of certain exchanges of natural gas with El Paso Natural Gas Company (El Paso), all as more fully described in the application which is on file with the Commission and open to public inspection.

Phillips 66 requests authority to abandon a gas exchange with El Paso that is done in accordance with the provisions of a gas exchange agreement dated June 18, 1982, between Phillips 66 and El Paso. Phillips 66 indicates that the exchange service is preformed pursuant to a certificate issued in Docket No. CI86-85-000 (Order dated May 19, 1986) and its FERC Gas Rate Schedule No. 93. The application indicates that Phillips 66 and El Paso have agreed that the case-specific certificate exchange agreement can be consolidated and further transportation service necessary provided by El Paso for Phillips 66 "... under El Paso's blanket transportation certificate." Phillips 66 states that this filing was made to compliment El Paso's abandonment application filed October 24, 1991, in Docket No. C92-122-000.

Comment date: January 6, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Northern Natural Gas Company

[Docket No. CP92-234-000]

December 17, 1991.

Take notice that on December 12, 1991, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-234-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and upgrade an existing delivery point and appurtenant facilities to accommodate increased natural deliveries to Northern States Power Company of Wisconsin (NSP), for redelivery to the community of La Crosse, Wisconsin, under its blanket certificate issued in Docket No.

CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to operate and upgrade an existing delivery point for NSP in order to accommodate natural gas deliveries under Northern's CD-1, SS-1, FT-1, IT-1, and ISS Rate Schedules for redelivery to the community of La Crosse, Wisconsin. Northern states that due to extreme weather conditions in the area, operating conditions at this station posed a significant risk of failure. It was indicated that immediate action was necessary to upgrade the equipment with a temporary facility under the emergency regulations of subpart I of part 284 of the Commission's Regulations since failure of the facilities would result in a loss of pressure on NSP's distribution system resulting in a loss of service to approximately 315 residences. It is indicated that the upgraded facilities were ready for service on December 4, 1991.

Northern proposes to further upgrade the facilities on a permanent basis upon approval of the authorization of this proposal. Northern advises that the proposed deliveries to NSP would be served from the total firm entitlements currently to the community of La Crosse, Wisconsin and that NSP has not requested that any firm entitlements be assigned to the upgraded delivery point.

Northern estimates an increase in peak day and annual deliveries from the upgraded facilities of 790 million Btu

and 57,422 million Btu, respectively. Northern states that the facilities would be financed in accordance with Paragraph 2 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1. Northern estimates the cost of upgrading the facility at \$33,600.

Comment date: January 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP92-236-000]

December 17, 1991.

Take notice that on December 12, 1991, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-236-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to add a delivery meter station as a delivery point for firm gas sales to Intermountain Gas Company (Intermountain) under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that under the Commission's prior notice procedure, Northwest received approval on November 2, 1991, to construct and operate a new delivery meter station in Caribou County, Idaho for delivery of up to 2,500 Dth equivalent of natural gas per day to Intermountain for service to Chemstar Lime Company (Chemstar).

Northwest states that IGI Resources, Inc., as the natural gas procurement and administrative service agent for Intermountain, requested Northwest to add the Chemstar meter station to the Rate Schedule ODL-1 service agreement with Intermountain. Northwest indicates that Northwest and Intermountain have revised the service agreement to add the Chemstar meter station as a delivery point thereunder without making any changes to the existing contract demand or existing point specific maximum daily delivery obligations. The application states that this will allow Intermountain the opportunity to sell volumes of natural gas to Chemstar at or downstream of the Chemstar meter station after Northwest delivers gas to that point under either its firm sales or firm transportation service agreements with Intermountain.

Comment date: January 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Chevron U.S.A. Inc., et al.

[Docket No. G-5720-002, ¹ et al.]

December 18, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective application which are on file with the Commission and open to public inspection.

Comment date: January 6, 1992, in accordance with Standard Paragraph J at the end of this notice.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-5720-002 D 10-15-91	Chevron U.S.A. Inc., P.O. Box 3725, Houston TX 77253-3725.	Texas Eastern Transmission Corporation, North Choudrant Field, Lincoln Parish, Louisiana.	Assigned 7-30-91 to WHW, Inc.
CI92-7-000 (CI84-4) B 10-29-91	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Williston Basin Interstate Pipeline Company, Lignite Plant, Burke County, North Dakota.	Assigned 4-1-91 to Interenergy Shelfield Processing Company.
CI92-8-000 (CI81-274) B 11-1-91	Samedan Oil Corporation, P.O. Box 909, Ardmore, Oklahoma 73402.	Tennessee Gas Pipeline Company, Brazos A-17 block, Offshore, Texas.	Depleted reserves.
CI92-14-000 (G-18293) B 12-4-91	Maxus Exploration Company, 717 N. Harwood Street, Dallas, Texas 75201.	Transcontinental Gas Pipe Line Corporation, Big Foot Field, Frio County, Texas.	Assigned 9-1-91 to Reservoir Enhancement & Operation Company, Inc.

7. Northern Natural Gas Company

[Docket No. CP92-242-000]

December 18, 1991.

Take notice that on December 16, 1991, Northern Natural Gas Company

(Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-242-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205,

157.212) for authorization to operate an existing delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, a division of UtiliCorp United Inc. (Peoples), under Northern's blanket certificate issued in Docket No.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the proposed delivery point was constructed pursuant to the emergency provisions of part 284, subpart I, of the Commission's Regulations. Northern further states that the delivery point would be used to provide service for the community of East Big Marine Lake, Minnesota, located in Washington County, Minnesota. Northern states that the total present and proposed peak day and annual volumes to be delivered to Peoples for delivery at the delivery point are 52 Mcf per day on a peak day and 5,821 Mcf on an annual basis. Northern advises that the volumes to be delivered to Peoples are within the currently authorized level of firm entitlements for Peoples. Northern further advises that the proposed deliveries to Peoples at the delivery point would be served from the total firm entitlements currently assigned to the community of Pine City, Minnesota. Northern states that Peoples has not requested that any firm entitlements be assigned to this delivery point. Northern avers that the delivery of such volumes would not impact Northern's peak day and annual deliveries as reflected above. It is stated that, in addition to jurisdictional gas sales to Peoples under Northern's Rate Schedule CF-1, SS-1, and WPS-1, Northern would deliver gas transported under Rate Schedule FT-1 to Peoples at the existing delivery point.

Comment date: February 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP92-238-000]
December 18, 1991.

Take notice that on December 13, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-238-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon certain delivery taps located in Wheeler County, Texas and the related natural gas services used for the sale for resale of natural gas to West Texas Gas, Inc. (West Texas) under El Paso's blanket certificate issued in Docket No. CP82-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso proposes to abandon, in place, the Shamrock No. 1 tap consisting of one

4-inch tap with appurtenances located on Meridian Oil, Inc.'s (Meridian) B-7 Lateral pipeline in Wheeler County, Texas; the Shamrock No. 2 tap consisting of one 2-inch tap with appurtenances located on Meridian's Howe A #1 well-tie pipeline in Wheeler County, Texas; and the services used for the delivery and sale of natural gas to West Texas for resale to the community of Shamrock, Texas (Shamrock). El Paso states that, effective April 1, 1988, El Paso sold the gathering facilities on which these delivery taps are located to Meridian and continues to make sales of natural gas to West Texas for resale to Shamrock and environs with Meridian providing deliveries to West Texas on El Paso's behalf. El Paso states that Meridian has advised El Paso that due to decline in reservoir pressures, the related gathering system pressure for delivery to West Texas has become too low to guarantee deliveries during periods of extreme cold temperatures. As a result, El Paso indicates it could no longer assure that future deliveries would be made at a pressure necessary to serve West Texas. Therefore, El Paso states that West Texas contracted with Palo Duro Pipe Line Company, Inc. (Palo Duro), an intrastate pipeline system, located in close proximity to serve Shamrock. Further, El Paso states that this abandonment would not result in or cause any interruption or reduction of natural gas service presently rendered by West Texas to Shamrock.

Comment date: February 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

9. Peoples Natural Gas Company Division of Utilicorp United Inc. v. Williams Natural Gas Company and Vulcan Chemicals Division of Vulcan Materials Company

[Docket No. CP92-246-000]
December 18, 1991.

Take notice that on December 16, 1991, Peoples Natural Gas Company Division of Utilicorp United Inc. (Peoples), 1815 Capitol Avenue, Omaha, Nebraska 68102, filed in docket No. CP92-246-000 a complaint against Williams Natural Gas Company (Williams) and Vulcan Chemicals Division of Vulcan Materials Company (Vulcan) alleging numerous violations of law and policy and requesting an immediate and permanent stay of the construction and proposed transportation, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Peoples alleges that Williams and Vulcan have begun construction of a line from Williams' interstate pipeline to proposed plant facilities of Vulcan in Sedgwick County, Kansas. It is indicated that the construction and proposed transportation is being conducted ostensibly under authority of Natural Gas Policy Act of 1978 (NGPA).

Peoples alleges that the construction and transportation be enjoined immediately and permanently because, *inter alia*, the construction does not present the most environmentally acceptable route, the constructed required an environmental assessment before it commenced, the proposed facilities duplicate existing, available facilities that could be used to provide the proposed service at lower cost and with fewer adverse environmental impacts, the construction is illegal because the Commission regulation relied upon, *i.e.* 18 CFR 284.3, is unsupported by statutory authority, the construction and proposed transportation service do not meet the regulatory requirements for authorization under the NGPA, the construction and proposed transportation have the anticompetitive effect of preventing Vulcan from purchasing sales and transportation service from Peoples, and the construction and proposed transportation would produce unreasonable impacts in violation applicable laws and policies.

Comment date: January 17, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP92-235-000]
December 18, 1991.

Take notice that on December 12, 1991, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-235-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon gathering and transportation services provided for Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is requesting approval to abandon the interruptible gathering and transportation services it provides for CIG pursuant to Rate Schedules X-43, X-51, X-54, and X-65 of Northwest's FERC Gas Tariff, Original Volume No. 2. By two Termination Agreements, each dated June 30, 1991, Northwest and CIG mutually agreed to

terminate the Agreements effective upon Commission abandonment approval.

Northwest further states that no facilities will be abandoned in conjunction with the abandonment of these services.

Northwest states that abandonment of the transportation services is contingent upon retention of the existing Rate Schedule X-43, X-51, X-54 and X-65 priority of service dates for service under a replacement open-access transportation agreement with CIG dated June 1, 1991. Northwest further requests any necessary waivers of the first-come first-serve provisions of its tariff to allow December 29, 1977 (X-43), December 28, 1977 (X-51), March 16, 1978 (X-54) and February 27, 1979 (X-65), to be the initial priority of service dates for corresponding services under the replacement open-access transportation agreement.

Comment date: January 8, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-227-000]

December 18, 1991.

Take notice that on December 11, 1991, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP92-227-000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to operate certain existing delivery point facilities which have been constructed pursuant to section 311 of the Natural Gas Policy Act, all as more fully set forth with the Commission and open to public inspection.

Transco states that it has constructed, pursuant to section 311(a)(1) of the NGPA and § 284.3(c) of the Commission's Regulations, certain delivery point facilities to enable Transco to transport gas for the account of various customers pursuant to section 311 and part 284(B) of the regulations. The above mentioned facilities are located in counties or parishes in New Jersey, Maryland, Texas, Louisiana, Mississippi and Alabama. It is stated that a great majority of the delivery point facilities were utilized during the effective period of Order No. 526, the interim rule issued by the Commission on August 2, 1990 in Docket No. RM90-13-000, to transport gas under transportation arrangements converted from section 311 to blanket certificate authority. Transco further states that the utilization of such facilities for such "certificated" transportation was

pursuant to the temporary certificate authority granted in the interim rule. Since such temporary certificate authority apparently expired on November 4, 1991, the effective date of the final rule (Order No. 537) issued by the Commission on September 20, 1991 in docket No. RM90-7-000, *et al.*, Transco states that it is seeking certificate authority for such facilities so that service under the converted transportation arrangements, as well as other blanket certificate transportation arrangements, may be provided through such facilities. Accordingly, Transco requests NGA certification pursuant to section 7 of the NGA and §§ 157.205 and 157.212 of the Commission's Regulations to operate the delivery point facilities.

Transco submits that (1) receipt of the authorization requested will not cause the total volumes authorized prior to the request for any customers on Transco's system to be exceeded, (2) the operation of the delivery point facilities is not prohibited by Transco's tariff, and (3) Transco has sufficient capacity to accomplish deliveries through the delivery point facilities for transportation customers without detriment or disadvantage to Transco's other customers.

Comment date: February 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP92-247-000]

December 19, 1991.

Take notice that on December 17, 1991, Northwest Pipeline Corporation (Northwest) filed in Docket No. CP92-247-000 an application pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for permission and approval for temporary and partial abandonment of storage service for The Washington Water Power Company (Water Power) and for authorization to amend transportation service which Northwest provides BC Gas, Inc. (BC Gas), respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northwest requests the following:

(1) Permission and approval for temporary, partial abandonment of Northwest's obligation to render up to 19,000 dekatherm equivalent of natural gas per day (dt/d) of best efforts storage service to Water Power under Northwest's Rate Schedule SGS-1 as necessary to effect Water Power's temporary, partial releases to BC Gas of Water Power's right to best-efforts

storage withdrawals at the Jackson Prairie Storage Project.

(2) Authorization to amend its existing certificate of public convenience and necessity² under Northwest's Special Rate Schedule X-82 to: (i) Provide for the interruptible transportation of the additional 19,000 dt/d for Water Power for the account of BC Gas; (ii) add a contemplated interconnect with Sumas International Pipeline Inc. (SIPI) as a receipt and delivery point;³ (iii) eliminate the seasonal restrictions on service; and, (iv) generally update the rate references and other terms and conditions of service to be consistent with Northwest's current FERC Gas Tariff Volume 1 and 1-A.

Northwest states that Water Power and BC Gas are parties to a currently authorized agreement dated April 21, 1989, wherein Water Power has released to BC Gas 63,000 dt/d of the firm storage deliverability and a corresponding share of seasonal storage capacity which Water Power was entitled to utilize by virtue of its one-third ownership share in the Jackson Prairie Storage Project. Northwest states that Water Power and BC Gas recently have amended the April 21, 1989, agreement to provide for an additional release, on a best-efforts basis, of up to 19,000 dt/d of Water Power's best-efforts deliverability in Jackson Prairie. To help implement this additional release and to provide BC Gas with access to the additional storage volumes, Northwest requests the requisite approvals to further abandon its SGS-1 service obligations to Water Power and to modify its Rate Schedule X-82 transportation service for Water Power for the account of BC Gas.

Northwest states that the proposed additional abandonment will be only temporary and partial because the portion of the released 19,000 dt/d of best-efforts withdrawal capacity to be unavailable for SGS-1 service to Water Power and the duration of time for such unavailability will depend upon both BC Gas' daily requests for such service and Water Power's approval of such requests. Therefore, Northwest seeks to abandon its best-efforts service under

² Certificated by Commission orders issued in Docket No. CP83-213, 23 FERC ¶ 61,361 (1983), 27 FERC ¶ 62,178 (1984), 29 FERC ¶ 62,247 (1984).

³ Northwest states that SIPI, subsidiary of BC Gas is preparing an application to the FERC for a Presidential Permit and section 7(c) approval to construct pipeline facilities at Sumas, Washington to provide an interconnect between Northwest's facilities and Canadian pipeline facilities to be owned and operated by Huntingdon International Pipeline Corporation, another subsidiary of BC Gas. Northwest states that it is preparing a related prior notice application to construct and operate a new meter station to service the proposed interconnect.

SGS-1 to Water Power only to the extent of BC Gas' actual use of the additional 19,000 dt/d of capacity which Water Power, in its own judgment, makes available for release from day to day. Northwest states that no new facilities are proposed in this application.

Comment date: January 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

13. Iroquois Gas Transmission Company

[Docket No. CP92-245-000]

December 19, 1991.

Take notice that on December 16, 1991, Iroquois Gas Transmission System, L.P. (Applicant), One Corporate Drive, suite 606, Shelton, Connecticut 06484, filed in Docket No. CP92-245-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Applicant to construct and operate a compressor station to be located in the town of Wright, New York. Applicant states that the compressor station is necessary to provide natural gas transportation services for two shippers in the total amount of 65.2MMcf/d. Applicant states that it has entered into precedent agreements with Niagara Mohawk Power Corporation and Dartmouth Power Associates. Applicant will provide this firm transportation service under its blanket certificate.

Comment date: January 9, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by sections 7 and 15 of the National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31050 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10787-002 Washington]

Pacific Hydro, Inc.; Surrender of Preliminary Permit

December 23, 1991.

Take notice that Pacific Hydro, Inc., permittee of the McLeod Ridge Hydroelectric Project No. 10787 has requested that its permit be terminated. The permit was issued on December 8, 1989 and would have expired on November 30, 1992. The project would have been located on the North Fork of the Snoqualmie River in King County, Washington.

The permittee filed the request on December 2, 1991, and the permit for Project No. 10787 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31038 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-22-015]

Algonquin Gas Transmission Co.; Report of Refunds

December 20, 1991.

Take notice that on November 15, 1991, Algonquin Gas Transmission Company (Algonquin) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in compliance with the provisions of the Stipulation and Agreement filed with the Commission on December 14, 1990, and approved by the Commission on April 19, 1991.

Algonquin states that copies of the refund summary and detailed calculations of their individual refund amounts was sent to each of Algonquin's affected customers and to the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31056 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-222-000]

Arkansas Power & Light Co.; Filing

December 23, 1991.

Take notice that on November 13, 1991, Arkansas Power & Light Company (AP&L) tendered for filing a Compliance Report regarding refund by AP&L to certain wholesale customers resulting from the Settlement Agreement in Docket Nos. ER89-678-000, EL90-16-000 and EL90-45-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31042 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-87-002]

Camden Cogen L.P.; Amendment to Filing

December 20, 1991.

On December 19, 1991, Camden Cogen L.P. tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership

structure and clarifies certain technical information.

Any person desiring to be heard or object to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by January 9, 1992, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31053 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-39-006]

Central Louisiana Electric Co., Inc.; Notice of Filing

December 23, 1991.

Take notice that on December 6, 1991, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing its report of revenues refunded to Louisiana Energy and Power Authority in the amount of \$169,360.04.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31045 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-39-005]

Central Louisiana Electric Co., Inc.; Notice of Filing

December 23, 1991.

Take notice that on December 6, 1991 Central Louisiana Electric Company, Inc. (CLECO) tendered for filing copies of revised T-3 rates for interruptible transmission service to Louisiana Energy and Power Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31048 Filed 12-27-91 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-186-053]

Great Lakes Gas Transmission Limited Partnership; Report of Refunds

December 20, 1991.

Take notice that on November 29, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed with the Federal Energy Regulatory Commission (Commission) a Refund Report pursuant to Article II of the Stipulation and Agreement (Settlement) filed May 18, 1990, in Docket Nos. RP89-186-000, RP90-20-000, RP86-35-013. The Settlement was approved by Commission orders issued September 13, 1990 and October 22, 1991. The report summarizes payments made on November 21, 1991, in accordance with the Settlement.

Great Lakes states that copies of the filing are being served on the Public Service Commissions of Minnesota, Wisconsin and Michigan and the parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31055 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR92-4-000]

The Maple Gathering Corp., Petition for Rate Approval

December 20, 1991.

Take notice that on December 11, 1991, The Maple Gathering Corporation (Maple Gathering) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 15.22 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Maple Gathering states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the state of New Mexico. Maple Gathering's petition states that its system consists of approximately 160 miles of pipeline located in Lea, Chaves, and Eddy Counties, New Mexico. Its previous maximum interruptible transportation rate of 33.62 cents per MMBtu for section 311(a)(2) service was approved by the Commission December 3, 1991 in Docket Nos. ST89-923-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 6, 1992. The petition

for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31054 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP90-20-006]

Great Lakes Gas Transmission Limited Partnership; Report of Refunds

December 20, 1991.

Take notice that on December 10, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed with the Federal Energy Regulatory Commission (Commission) a Refund Report pursuant to Article III of the Stipulation and Agreement (Settlement) filed May 18, 1990, in Docket Nos. RP89-186-000, RP90-20-000, RP86-35-013. The Settlement was approved by Commission orders issued September 13, 1990 and October 22, 1991. The report summarizes payments made on December 6, 1991 in accordance with the Settlement.

Great Lakes states that copies of the refund report are being served on the Public Service Commissions of Minnesota, Wisconsin and Michigan and the parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31058 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-13-008]

Michigan Consolidated Gas Co.; Refund Report

December 20, 1991.

Take notice that Michigan Consolidated Gas Company-Interstate Storage Division (MichCon), filed with the Federal Energy Regulatory Commission, a refund report on

December 10, 1991, in compliance with the Commission's orders of October 24, 1991 and November 13, 1991, in Docket No. RP84-13-006. MichCon was required to refund \$95,958.20, with interest, to United Gas Pipe Line Company (United) and ANR (ANR) Pipeline Company.

MichCon states that refunds were made on December 9, 1991, and that copies of the refund report were sent to United, ANR, and the Michigan Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31057 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-1582-000, CP90-1567-000, and RP89-49-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

December 23, 1991.

Take notice that an informal settlement conference will be convened in the above-referenced proceedings on January 6, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

For additional information, please contact Warren C. Wood at (202) 208-2091.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31047 Filed 12-27-91 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2318-002 New York]**Niagara Mohawk Power Corp.; Filing of Application**

December 23, 1991.

Take notice that on December 13, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the E.J. West Hydroelectric Project No. 2318.

The E.J. West Project is located on the Sacandaga River, in Saratoga County, New York. The project consists of a 38.5-foot-wide by 96-foot-long reinforced concrete intake structure, a 25,940-acre reservoir, and a powerhouse with an installed capacity of 20,000 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate basis factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with Section 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31039 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER91-360-002]**Pennsylvania Power & Light Co.; Notice of Filing**

December 23, 1991.

Take notice that on December 17, 1991, Pennsylvania Power & Light Company tendered for filing its Compliance Refund Report pursuant to the Commission's Letter Order issued November 13, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31043 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR92-5-000]**Picor Pipeline Co.; Petition for Rate Approval**

December 20, 1991.

Take notice that on December 16, 1991, Picor Pipeline Company (Picor) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of \$0.0028 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Picor states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA with facilities in Oklahoma, New Mexico and Texas. Picor's states that its Oklahoma system is the subject of this petition. Its previous maximum interruptible transportation rate of \$0.0033 per MMBtu for section 311(a)(2) service for this system was approved by the Commission June 21, 1989 in Docket Nos. ST89-1257-000, *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 6, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31052 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER91-587-000]**Public Service Company of Colorado; Notice of Filing**

December 23, 1991.

Take notice that on December 10, 1991, Public Service Company of Colorado tendered for filing an amendment to its filing of initial Electric Tariff No. 49.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31046 Filed 12-27-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP91-140-008, RP91-140-010 and RP91-140-011]**Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff**

December 23, 1991.

Take notice that Questar Pipeline Company (Questar) on November 15, 1991, tendered for filing in Docket No. RP91-140-008, proposed changes to its FERC Gas Tariff, Original Volume Nos. 1, 1-A and 3, in compliance with the Commission's May 31, 1991 order. (55 FERC 61,335 (1991))

Questar requests an effective date of November 1, 1991 for the following tariff sheets:

Fourth Substitute Fourteenth Revised Sheet No. 12—Original Volume No. 1
Substitute Second Revised Sheet No. 39—Original Volume No. 1
Substitute First Revised Sheet No. 39A—Original Volume No. 1
Substitute Sixth Revised Sheet No. 5—Original Volume No. 1-A
Substitute Second Revised Sheet No. 5A—Original Volume No. 1-A
Substitute Seventh Revised Sheet No. 8—Original Volume No. 3
Substitute First Revised Sheet No. 10B—Original Volume No. 3

Questar states that Sheet Nos. 12, 5, 5A and 8 include base rates that reflect the removal of costs, as required by the Commission's May 31, 1991 order, related to plant additions that were not in service by the end of the September 30, 1991 test period. Sheet Nos. 39, 39A and 10B are required to correct the superseded sheet designation of Sheet No. 39 and to include the docket number and order date effecting the elimination of the D-2 billing determinants.

On December 10, 1991, Questar tendered for filing in Docket No. RP91-140-010 corrections to its filing of November 15, 1991, by filing the following tariff sheets:

Fifth Substitute Fourteenth Revised Sheet No. 12—Original Volume No. 1
Second Substitute Sixth Revised Sheet No. 5—Original Volume No. 1-A
Second Substitute Second Revised Sheet No. 5A—Original Volume No. 1-A
Second Substitute Seventh Revised Sheet No. 8—Original Volume No. 3

Questar further requests that the following tariff sheets submitted on November 15, 1991 be rejected:

Fourth Substitute Fourteenth Revised Sheet No. 12—Original Volume No. 1
Substitute Sixth Revised Sheet No. 5—Original Volume No. 1-A
Substitute Second Revised Sheet No. 5A—Original Volume No. 1-A
Substitute Seventh Revised Sheet No. 8—Original Volume No. 3

On December 12, 1991 Questar tendered for filing in Docket No. RP91-140-011 the correction of a typographical error in its filing of December 10, 1991, by filing the following tariff sheet:

3 Sub Sixth Revised Sheet No. 5—Original Volume No. 1-A

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31041 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-6-000]

South Georgia Natural Gas Co.; Tariff Filing

December 23, 1991.

Take notice that on December 16, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 15, 1992:

Tenth Revised Sheet No. 44
Original Sheet No. 44A
Eleventh Revised Sheet No. 45
Eighth Revised Sheet No. 46
Original Sheet No. 46A
Ninth Revised Sheet No. 47

South Georgia states that the purpose of this filing is to update its Index of Requirements (Index) as set forth in South Georgia's FERC Gas Tariff to reflect the requirements served by South Georgia's system during a new 12-month base period ending March 31, 1989. South Georgia also asserts that the Index reflects the authorizations granted South Georgia by the Commission in its Order Issuing Certificate and Approving Abandonment which was issued on October 31, 1991, in Docket No. CP92-6-000. South Georgia also indicates that the tariff filing also incorporates other service changes which have already been implemented by South Georgia and its customers and service changes authorized by the Commission. Accordingly, South Georgia has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective January 15, 1992.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 6, 1992. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31040 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-202-007]

Trunkline Gas Co.; Report of Refunds

December 20, 1991.

Take notice that on November 14, 1991, Trunkline Gas Company (Trunkline) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report in accordance with Article V of the Offer of Settlement (Settlement) dated March 27, 1991, approved by the Commission's orders issued August 1, 1991 and September 30, 1991 in Docket No. RP85-202-000. Trunkline states that the report summarizes repayment amounts Trunkline made on October 29, 1991, to its jurisdictional sales customers who were subject or sponsoring parties to the Settlement. Michigan Gas Utilities Company elected not to be a subject or sponsoring party to the Settlement and repayment is not applicable to them.

Trunkline states that copies of the filing were sent to Trunkline's affected customers and the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31059 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket Nos. 86-48-NG; 91-92-NG]

Brooklyn Union Gas Co., et al., Commonwealth Gas Co.; Order Transferring Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order transferring long-term authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order transferring authority to import from Canada up to

4,500 Mcf of gas per day over a 15-year term from Boston Gas Company (Boston Gas) to Commonwealth Gas Company. The transferred volumes are part of the 200 Bcf of natural gas authorized to be imported by Brooklyn Union Gas Company, *et al.* (Brooklyn Union), a group of local distribution companies, in DOE/ERA Docket No. 86-48-NG. Boston Gas is one of the Brooklyn Union authorization holders.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 19, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31170 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-97-NG]

Interenergy Corp.; Application To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import and Export Natural Gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of November 12, 1991, of an application filed by Interenergy Corporation (Interenergy) requesting blanket authorization to import up to 73 Bcf of natural gas and export up to 73 Bcf of natural gas from and to Canada and any other country with which trade in natural gas is not prohibited. The application requests that the authorizations be approved for separate two-year terms beginning on the dates that the first import and the first export commence. Interenergy intends to use existing pipelines for the importation and exportation of gas supplies, and states that it will advise DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and

written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Program, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751; Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION:

Interenergy, a corporation organized under the laws of the State of Kentucky, has its principal place of business in Denver, Colorado. Interenergy requests authorization to import and export natural gas on a short-term or spot-market basis for its own account, as well as for the accounts of others for which Interenergy may agree to act as an agent. Although Interenergy is primarily interested in importing and exporting natural gas from and to Canada, it also seeks authority to import and export from and to any country with which trade in natural gas is not prohibited.

Interagency requests authorization to import gas for sale on a short-term basis to U.S. purchasers, including pipelines, local distribution companies, electric utilities and commercial and industrial end-users, or to re-export to foreign markets. The proposed export authority would enable Interenergy to sell U.S. gas it has purchased or act as an agent for other parties that desire to sell natural gas under short-term or spot-market basis to international purchasers. In support of its application, Interenergy states that the terms of each import or export transaction will be the product of arms length negotiations and determined by competitive factors in the natural gas market.

The decision on the application for the import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6664, February 22, 1984). In reviewing the proposed export application, domestic need for the gas will be

considered, and any other issue determined to be appropriate. Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. The applicant asserts the proposed imports would be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is

material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Interenergy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.
[FR Doc. 91-31171 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-94-NG]

Michigan Consolidated Gas Co., Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy,
Department of Energy.

ACTION: Notice of application to import
natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 1, 1991, of an application filed by Michigan Consolidated Gas Company (MichCon) requesting authorization to import up to 32,000 Mcf of natural gas per day from Canada over a five-year period ending October 31, 1996. The gas would enter the U.S. at a point on the international border near Emerson, Manitoba, where existing pipeline facilities of TransCanada Pipelines Limited (TCPL) interconnect with the facilities of Great Lakes Transmission Limited Partnership (Great Lakes). No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and

0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES: Offices of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116;

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

MichCon, a Michigan corporation with its principal place of business in Detroit, Michigan, is engaged in the storage, transmission, and local distribution of natural gas to approximately one million customers in the State of Michigan.

Consistent with the terms of a September 1, 1991, gas purchase contract with Western Gas Marketing Limited (WGM), MichCon requests authority to import up to 30,000 Mcf of natural gas per day on a firm basis, and up to an additional 2,000 Mcf of natural gas per day on an interruptible basis, over a five-year period beginning on November 1, 1991, the date its current import authority, granted by DOE/ERA in Opinion and Order No. 157 (1 ERA Para. 70,687), expired. MichCon is subject to a minimum monthly purchase obligation equal to 720,000 Mcf.

The contract requires MichCon to pay WGM a monthly demand charge, a commodity charge, and a deficiency payment, if any. The monthly demand charge is equal to the per Mcf Canadian transportation monthly demand tolls multiplied by 30,000. The commodity charge is indexed on a monthly basis to the cost to MichCon of spot gas delivered by ANR Pipeline Company, less the monthly demand charge based on a 100 percent load factor rate. The deficiency payment, if any, is equal to 20 percent of the commodity charge multiplied by the difference between the volume of gas purchase by MichCon in a given month and the minimum monthly purchase obligation. The price for interruptible gas would be the same as

the price for firm contract volumes at the 100 percent load factor level.

In support of its application MichCon asserts the source of the natural gas to be imported is a supply of natural gas that TCPL has under contract in western Canada, the management and marketing of which is the responsibility of WGM. MichCon expects these reserves to provide the quantities of gas needed over the period of the import authorization. The gas to be imported would become part of MichCon's general system supply and, therefore, would be used by an and all of MichCon's nearly one million customers, including those communities in the northern peninsula of Michigan which are served only by the Great Lakes' system. Since MichCon intends to use only existing facilities of U.S. pipelines, it asserts the imports for which authorization is requested will have no significant impact on the environment. If its application is approved, MichCon would comply with DOE's quarterly reporting requirements.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of long-term supply. Parties, especially those that may oppose this application, should comment in their responses on these issues. MichCon asserts the price of natural gas under its sales contract with WGM is competitive and the reserves from which this gas will be drawn are secure and adequate for the quantities of gas required during the period of the requested import authorization. Parties opposing MichCon's request for import authorization bear the burden of overcoming these assertions.

NEPA Compliance. The Nation Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and

to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Anthony J. Como,
Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.
[FR Doc. 91-31173 Filed 12-27-91; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 91-98-NG]

New England Power Co.; Application for Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on November 15, 1991, by New England Power Company (NEP) requesting blanket authorization to import an unspecified amount of natural gas from Canada. In an amended application filed on November 22, 1991, NEP requested authorization to import up to 65,000 Mcf per day of natural gas over a two-year term beginning on the date of first delivery. The proposed imports would enter the U.S. at a point on the international border where TransCanada Pipeline Limited (TCPL) interconnects with the Iroquois Gas Transmission System (Iroquois). NEP would file quarterly reports with DOE detailing import transactions.

The applications are filed under section 3 of the Natural Gas Act of DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116;
Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: NEP, a Massachusetts corporation with its principal place of business in Westborough, Massachusetts, is a wholesale electrical generation subsidiary of New England Electric System. NEP is engaged in the generation and transmission of electric power for sale at wholesale to affiliated and unaffiliated utilities in the New England region. NEP is also a major source of power to the New England Power Pool.

The proposed imports would serve as an interim, supplemental, or replacement supply, and would be used to generate electricity, and, in particular, would displace residual fuel oil currently being burned at NEP's Brayton Point generating station in Somerset, Massachusetts, and at its Manchester Street generating station in Providence, Rhode Island. NEP states that the proposed imports would be purchased under market-responsive, competitive, short-term and spot arrangements of no more than two years in length. The gas would be imported at the Iroquois import point and be transported to NEP using the pipeline facilities of Iroquois, Tennessee Gas Pipeline Company, and Algonquin Gas Transmission Company (the Iroquois/Tennessee Phase II facilities). In DOE/FE Opinion and Order No. 551, issued on November 27, 1991, NEP was granted a long-term import authorization to import up to 60,000 Mcf per day of Canadian Natural Gas using the Iroquois/Tennessee Phase II facilities.

In support of its applications, NEP asserts that the blanket authorization will increase fuel diversity and enhance fuel security and reliability in New England. In addition, displacing oil with gas for electric generation at the Brayton Point and Manchester Street generating stations will help achieve compliance with environmental requirements and improve air quality.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an important arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports would be competitive. Parties opposing NEP's request for import authorization bear the burden of overcoming this assertion.

All parties should be aware that if DOE approves this requested blanket authorization, it may designate a total authorized volume for the two-year term rather than a daily limit specified by NEP in order to provide NEP with maximum operating flexibility. Based on its requested import authorization of 65,000 Mcf per day, NEP's two-year authorization would be 48 Bcf of natural gas.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an

oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NEP's original and amended applications are available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.
[FR Doc. 91-31174 Filed 12-27-91; 8:45 am]

BILLING CODE 9450-01-M

[FE Docket No. 91-99-NG]

Petro Source Corp.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 18, 1991, of an application filed by Petro Source Corporation (Petro Source) requesting blanket authorization to import from Canada and Mexico up to 100 Bcf of natural gas, over a two-year term beginning on the date of first delivery of either import or export. The proposed imports and exports would take place at any point on the international borders where existing pipeline facilities are located. No new pipeline construction would be involved. Petro Source would provide DOE with quarterly reports detailing any import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and

0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116;
Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Petro Source, a Utah corporation with its principal place of business in Houston, Texas, is a natural gas marketer involved in arranging the sale and transportation of domestic natural gas in the United States. Petro Source is a wholly owned subsidiary of Petro Source Investments, Inc., a Delaware corporation with its principal place of business in Houston, Texas.

Petro Source requests authorization to import natural gas for sales to pipelines, commercial and industrial end-users, and local distribution companies. Petro Source states that the requested export authorization would allow it to sell U.S. natural gas for which there is no present national or regional need. Petro Source requests authorization to import and export natural gas on its own behalf or acting as an agent on the behalf of others. Petro Source indicates in its application that the identity of its suppliers and purchasers, and the specifics of each sale, are not known at this time, but the contractual arrangements, including the price paid for the gas, would be competitive spot and short-term transactions based on market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing

natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues. Petro Source asserts that its proposal is in the public interest. Parties opposing Petro Source's application bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should

identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Petro Source's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Athony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31175 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Termination of Exception Relief and Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of termination of exception relief and proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the termination of the exception relief granted to the 341 Tract Unit of the Citronelle Field and proposed procedures for the disbursement of \$121,000,000, to be obtained by the DOE as the result of the termination of the relief, plus any interest that accrues on those funds. The OHA has tentatively determined that the participants in the DOE Crude Oil Entitlements Program will be eligible to receive a portion of those funds. The DOE proposes that the remaining funds be disbursed in accordance with its Modified Statement of Restitutionary Policy.

DATE AND ADDRESS: Comments on the proposed procedures must be filed in duplicate on or before January 29, 1992, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case Number LFX-0006.

FOR FURTHER INFORMATION CONTACT:

Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the issuance of a final Decision and Order that terminates the exception relief granted to the 341 Tract Unit of the Citronelle Field. Pursuant to that relief the Unit recertified a sufficient quantity of its prior production of price-controlled crude oil to produce \$63.8 million. That amount was placed in an escrow account to fund a tertiary crude oil recovery project. Notice is also hereby given of the issuance of a Proposed Decision and Order that sets forth the procedures the DOE proposes to use to disburse the escrowed funds, which, with accrued interest, now total approximately \$121,000,000, plus any future interest that accrues on the funds.

Since the recertification by the Unit had the effect of raising per-barrel prices of crude oil to participants in the Entitlements Program, the DOE has tentatively decided that a portion of the escrowed funds should be reserved for refunds for those participants. The percentage of the escrowed funds that will be allocated to the refiners will reflect the level of absorption by the refiners of the additional costs associated with the recertification. The DOE proposes a 90 day period from the date of issuance of a final determination on the proposed refund procedures in which these participants may submit economic evidence on the absorption rate. The DOE also proposes this same 90 day deadline for submission of individual refund applications by Entitlements Program participants. The refund application process for participants in the Entitlements Program will be very streamlined.

The DOE also proposes to convene a hearing on the refiner absorption issue. After the level of refiner absorption is determined, remaining funds will be treated like crude oil overcharge funds pursuant to the DOE's Modified Statement of Restitutionary Policy. Accordingly, those funds will be divided as follows: 40 percent to the federal government, 40 percent to the States

and 20 percent set aside for direct restitution to end-users.

Any member of the public may submit written comments regarding the proposed refund procedures.

Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this Proposed Decision and Order in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 24, 1991.

Name of case: The 341 Tract Unit of the Citronelle Field.

Date of filing: March 13, 1991.

Case number: LFX-0006.

This Decision and Order concerns the disbursement of an escrow fund that was originally established by the 341 Tract Unit of the Citronelle Field (the Unit or Citronelle) when exception relief was granted to it by the Office of Hearings and Appeals (OHA). The exception relief was designed to enable the Unit to undertake a tertiary crude oil recovery project. Pursuant to that exception relief, which was granted in December 1980, the Unit recertified a sufficient quantity of its prior production of price-controlled crude oil to produce \$63.8 million, and that amount was placed in an escrow account. The Unit was allowed to make withdrawals for expenses incurred in connection with its project. Three Forty One Tract Unit of the Citronelle Field, 10 DOE ¶81,027 (1983).

In a Decision and Order issued concurrently with the present determination, the relief was terminated, and the funds directed to be moved to an escrow account established with the United States Department of the Treasury. The 341 Tract Unit of the Citronelle Field Case No. KEZ-0096 (Citronelle). With accrued interest, there is now approximately \$121 million in the escrow account.

In *Citronelle* we determined that the entire escrow fund should be disbursed

to parties who were injured as a result of the Unit's recertification of the price-controlled crude oil. When the recertification occurred, the DOE's Crude Oil Entitlements Program operated to spread the additional costs throughout the nation. As a result, the injured parties are difficult to identify and potentially numerous, a situation which is well suited to opening a special refund proceeding of the type utilized in the past for refunding oil overcharges. See 10 CFR part 205, subpart V. We therefore propose to hold a refund proceeding to identify those parties and to determine the amounts which they are entitled to receive.

Under the procedural regulations of the Department of Energy (DOE), the Office of Hearings and Appeals may formulate and implement special refund procedures for the purpose of refunding monies collected by the DOE to those injured by actual or alleged violations of the DOE regulations. 10 CFR part 205, subpart V. This subpart is applicable to those situations in which the DOE is unable to readily identify persons who are entitled to refunds specified in a Remedial Order, Remedial Order for Immediate Compliance, and Order of Disallowance or a Consent Order, or to readily ascertain the amounts that such persons are entitled to receive. 10 CFR 205.280.

We recognize that the funds involved in this proceeding originated with exception relief granted by the DOE. They were not the result of a violation, or the subject of a Remedial Order, Order of Disallowance or Consent Order, as specified in our subpart V regulations. However, through the operation of the Entitlements Program, the \$63.8 million recertification by Citronelle did have the effect of raising crude oil costs throughout the United States. Therefore, we believe that the consequences of that recertification on the petroleum industry and on ultimate purchasers of refined petroleum products mimicked the effects of crude oil overcharge violations.

Parties injured by the overall increases in crude oil costs caused by the Unit's recertification of price-controlled crude oil should therefore have an opportunity to receive restitution from the escrowed funds. We believe a proceeding modeled after the type provided for at 10 CFR part 205, subpart V, best permits us to accomplish that goal. Consequently, we will refer to the subpart V regulations in fashioning a proceeding for the purposes of identifying those parties and ascertaining the amounts they should receive.

We believe that in general there are two classes of parties that incurred injury as a result of the Unit's recertification of the crude oil and that should be considered eligible to file applications and receive refunds directly from the escrowed monies: (i) Crude oil refiners and (ii) end-users of refined petroleum products. We therefore propose a bifurcated or two-stage proceeding. A portion of the Citronelle escrow fund will be allocated to a refund proceeding for refiners. The procedures we propose for disbursement of the refiners' share of the fund are set forth immediately below. A discussion of the methodology proposed for disbursing the remaining monies will follow:

Refiners

Due to the operation of the Entitlements Program, the \$63.8 million recertification had the effect of raising the cost of crude oil charged to all crude oil purchasers on the entitlements list. This is so because under the Entitlements Program, the refiner of the crude oil recertified by the Unit received additional entitlements benefits, which compensated it for its increased crude oil costs. See The 341 Tract Unit of the Citronelle Field, 7 DOE ¶ 81,140 at 82,924 (1980). Since the Entitlements Program generally operated to equalize costs of crude oil to all refiners, these costs then rose slightly nationwide in response to the recertification. OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (V), (VI)(B). Thus, no one refiner bore all the cost of the recertification. Since crude oil prices rose by the same amount per barrel for all participants in the Entitlements Program, we believe that market prices for all refined products also tended to rise in concert, and refiners as a group were thus generally able to recoup most of the cost of the recertification by the Unit.

Nevertheless, we believe that refiners were not able to pass through all increased costs associated with the recertification. We have tentatively determined that they are thus eligible to receive a refund from these escrowed funds.¹ the portion of the fund that

¹ Under the Stripper Well Settlement Agreement, firms that received a refund from the Stripper Well escrow fund established on their behalf were required to waive their rights to a refund arising out of alleged crude oil violations. However, an exception was made for claims by refiners arising out of the funds involved in the Citronelle Unit's exception relief. Refiners Escrow, Release of Claims, (3)(F). Accordingly, refiners generally are not precluded from receiving a refund from these Citronelle funds by virtue of having signed a waiver

Continued

refiners, as a group, should receive will be a significant issue in the subpart V proceeding. In connection with the settlement of the Stripper Well Exemption Litigation, Federal District Court Judge Frank Theis directed the OHA to conduct fact-finding to try to determine who bore the impact of the overcharges involved in that litigation. In response to that Court directive, the OHA issued a report in which one of its conclusions was that refiners were generally able to pass through most increased costs, but that the class of refiners absorbed between 2.7 and 8.1 percent of the impact on them of overcharges involved in the stripper well litigation. OHA Report on Stripper Well Oil Overcharges, 6 Fed. Energy Guidelines at 90,640.

As a starting point of our analysis, we will apply the same absorption rate that we found in the Stripper Well Report to the class of refiners in this refund proceeding. Accordingly, we propose that the average of the 2.7 and 8.1 percent absorption rates, or 5.4 percent of the monies in the Citronelle escrow account, be allocated to the refiners for refund purposes. Each refiner's proportionate share of the Citronelle fund shall be the same as its proportionate share of the Stripper Well Refiners escrow fund.

This percentage is tentative, however. The crude oil recertification benefitting the Citronelle Unit was approved in late 1980. The Entitlements Program, along with the overall petroleum price control program regulating the price of crude oil and refined petroleum products, ended on January 27, 1981. As a result of the proximity between the decontrol date and the recertification, as well as the short notice provided to refiners regarding the recertification, the refiners' level of absorption of the increased crude oil costs may have been greater than the level proposed above. In view of this fact, refiners may wish to present evidence in this refund proceeding to the effect that the absorption rate we proposed above should not be finally adopted, and that a higher rate is appropriate.

Accordingly, we propose that within 90 days from the date of publication in the *Federal Register* of a final Decision and Order setting forth refund procedures in this matter, refiners may submit briefs and economic evidence on the issue of the proper refiner absorption rate. Refiners are encouraged to file joint submissions regarding their economic evidence of the level of

absorption. The opportunity to file a submission on the issue of the absorption of additional crude oil costs is not limited to refiners. Any participant in the Entitlements Program is eligible to submit evidence regarding the economic absorption issue.

In addition, we proposed that same 90 day deadline for each respective refiner or other Entitlements Program Participant to submit its individual Application for Refund from the Citronelle escrow fund. The application process itself in this proceeding will be streamlined. The refund application need only include the claimant's name, address, an authorizing signature and a statement to the effect that the claimant is applying to receive a share of the Refiners' Citronelle escrow fund. Claimants are not required to submit economic evidence regarding an absorption rate. They may elect simply to submit an Application for Refund.

We further propose that within 30 days of the day that the refiners' briefs and refund applications are due, interested parties may submit responses to the refiners' positions. We propose to hold an evidentiary hearing regarding the refiner absorption issue 45 days thereafter.

Disbursement of Remaining Funds

We further believe that it would be appropriate to disburse the Citronelle funds not allocated to the refiners in accordance with the DOE Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges (MSRP). 51 FR 27899 (August 4, 1986). The MSRP sets forth a disbursement procedure for funds remitted to the DOE in connection with crude oil violations. It provides for direct and indirect restitution for the adverse effects of crude oil overcharges on end-users of refined petroleum products. As we found above, the effects of the recertification by Citronelle on the Entitlements Program are identical to the effects of a crude oil violation. Similarly, we believe that the effects of that recertification on the prices charged end-users of refined petroleum products were identical to the effects of a crude oil overcharge on the prices of refined petroleum products purchased by end-users. Accordingly, we shall refer to the MSRP in our disposition of the remaining Citronelle monies.

The MSRP provides that crude oil overcharge funds will be divided among the States, the federal government and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of

petroleum products. Funds not reserved for the end-user claims (at least 80 percent) and any monies remaining after all valid claims are paid are to be disbursed equally to the States and federal government for indirect restitution. We propose to allocate the full 20 percent of the remaining Citronelle fund for the end-user claims process, since we believe that end-users are likely to have borne significant effects of the Citronelle recertification. *Cf. Texaco Inc.*, 19 DOE ¶ 85,200 (1989), modified, 19 DOE ¶ 85,236 (1989). Eighty percent will be divided equally between the States and the federal government. See MSRP.

The claims filing procedures and standards that we have adopted for end-users in crude oil refund proceedings are by now well-known and we will not repeat them here. For a discussion of the procedures and standards that we expect to use, see, for example, *Petrol Products, Inc.*, 20 DOE ¶ 85,436 (1990).

Comments regarding these proposed procedures with respect to both refiner claims and the procedures applicable to the remainder of the Citronelle fund must be filed within 30 days of the date of publication of this Proposed Decision and Order in the *Federal Register*.

It is therefore ordered that: The escrow account established at the United States Treasury and funded as a result of the termination of exception relief granted to the 341 Tract Unit of the Citronelle Field will be distributed in accordance with the foregoing Decision.

Decision and Order of the Department of Energy

Motion for Reconsideration Motion for Modification or Rescission Supplemental Order

December 24, 1991.

Names of petitioners: The 341 Tract Unit of the Citronelle Field, Exxon Company, USA et al.

Case numbers: HER-0050; HER-0106; KEZ-0096.

Dates of filing: March 2, 1983; June 24, 1985; July 12, 1989.

This Decision and Order concerns the 341 Tract Unit of the Citronelle Field, a very large crude oil producing property located in Alabama. During price controls, the DOE granted exception relief to permit the Unit to undertake a proposed tertiary project. This Decision and Order sets forth the DOE's determination that the exception relief should be terminated and the manner in which that termination will be accomplished. As explained below, the terms of the termination differ from those set forth in a proposed settlement

in connection with receipt of a Stripper Well refund. No such exception was made for resellers or retailers.

submitted by the Unit and a group of refiners.

I. Background

In 1979, the DOE announced an incentive program for tertiary recovery projects, to begin on January 1, 1980. See 10 CFR 212.78(a)(2). Under the incentive program, a producer could obtain up to \$20 million in "front-end" money for a given property, by selling price-controlled crude oil at exempt or market prices. Thus, the tertiary incentive program used the mechanism of decontrol to permit a producer to fund tertiary projects and thereby lessen U.S. dependence on foreign oil. Producers were not required to repay any benefits that they received pursuant to the incentive program. As a result of the way this regulatory program was structured, all projects that qualified were operated by major integrated oil companies.

The Unit was unable to obtain tertiary benefits comparable to those obtained by the integrated oil companies. Its inability to prepay expenses to other operating divisions was the primary impediment to its utilization of the incentive program.

Arguing that its inability to obtain tertiary benefits comparable to those obtained by the integrated oil companies was inequitable, the Unit applied to the DOE for exception relief. The DOE is required to grant exception relief in certain situations, including those in which the application of a regulatory requirement to a particular firm creates a gross inequity and frustrates a regulatory policy. The Office of Hearings and Appeals is the DOE office responsible for considering these exception requests.

In December 1980, the DOE determined that a "gross inequity" existed and that interim exception relief was appropriate to permit the Unit to participate in the tertiary incentive program. See *The 341 Tract Unit of the Citronelle Field*, 7 DOE ¶ 82, 523 (1980) (the December 15, 1980 Order). In the December 15, 1980 Order, the DOE determined that the Unit should be allowed to decontrol all its production as of January 1, 1980, which would result in approximately \$22.5 million in tertiary benefits. Because of the Unit's unique problems with raising capital for a tertiary program of sufficient size, the DOE also offered the Unit an alternate form of relief. The alternate relief would provide the Unit with \$63.8 million in financing for front-end costs. The alternate form of relief was subject to a repayment requirement in order to avoid excessive exception relief. The Unit was

given 10 days to make an irrevocable election concerning the form of relief.

The Unit chose the \$63.8 million in alternate relief, with its attendant repayment requirement. See *The 341 Unit of the Citronelle Field*, 7 DOE ¶ 81,140 (1980) (the December 31, 1980 Order). The Unit recertified a sufficient quantity of its prior production of price-controlled crude oil to produce \$63.8 million in additional sales revenues, and that amount was placed in an escrow account, against which the Unit began to make withdrawals for a pilot tertiary project confined to a small area of the Unit. The Unit then began to deposit incremental tertiary revenues into the account.

In January 1983, after considering vigorous objections posed by refiners, the DOE determined that the interim exception relief granted in December 1980 should be issued in final form. See *Three Forty One (341) Tract Unit of the Citronelle Field*, 10 DOE ¶ 81,027 (1983) (the January 1983 Order). Shortly after the issuance of the January 1983 Order, the Unit suspended its tertiary operations.

The Unit requested that the Office modify the repayment terms.¹ The Unit also indicated that, even if the requested modifications were granted, adverse changes in economic conditions that had occurred since the December 31, 1980 Order could affect the Unit's decision to go ahead with the project. Finally, the Unit appealed the January 1983 Order to the Federal Energy Regulatory Commission (FERC) on the ground that the repayment provisions were too stringent. The FERC has granted stays of the appeal, which is still pending. The 341 Tract Unit of the Citronelle Field, FERC Docket No. RA 83-7-000.²

At the same time, the refiners were contesting the exception relief before the DOE and in the courts. In 1985, the refiners filed a motion with the Office, in which they requested that the Office terminate the relief.³ In 1986, culminating the court challenge, the Temporary Emergency Court of Appeals (TECA) fully upheld the exception relief, citing the Department's broad authority to grant and fashion such relief. See *Exxon Corp. v. DOE*, 802 F.2d 1400 (Temp. Emer. Ct. App. 1986).

In late 1987, with the pilot tertiary project at the Citronelle Field still

stalled, the Unit and the refiners began negotiating a settlement.⁴ In 1989, the Unit and the refiners requested that the DOE approve a proposed settlement that would terminate the exception relief and distribute the funds in the escrow account, currently approximately \$121 million,⁵ as follows:

- (i) 42 percent (approximately \$50.8 million) to the Unit for the funding of a scaled-down tertiary project, with no repayment obligation,
- (ii) 40 percent (approximately \$48.4 million) to the refiners and their attorneys,
- (iii) 18 percent (approximately \$21.8 million) for distribution to end-users, i.e., \$8.72 million each to the U.S. Treasury and the States and \$4.36 million for distribution to end-user claimants.

In October 1989, the Office held a hearing on the proposed settlement. The Unit and the refiners appeared in support. Representatives of the States and a group of utilities, transporters and manufacturers argued that they were not represented in the negotiations and that the share allocated to them was too small.

II. Analysis

A. The Need To Terminate the Relief

It is undisputed that action is needed to resolve the current impasse. The Citronelle Unit's proposed tertiary project has now been stalled for eight years, without any sign of change. The Unit is unwilling to implement a tertiary project at the Field under the terms of the January 1983 Order. Although the Unit has pointed to alleged and actual changes in the repayment provisions as the cause of its unwillingness to proceed, the Unit has conceded that the driving force behind the Unit's problems with the repayment provisions is the decline in crude oil prices after the December 31, 1980 Order.

In 1980, the year that the Unit was granted interim exception relief, Citronelle crude oil had reached a high of \$39 per barrel. January 1983 Order at 82,662. Moreover, crude oil prices were expected to rise. In 1981, the Unit predicted that the price of the Unit's crude oil would rise to \$53 in 1985 and \$60 in 1987. Unit April 6, 1981 Response, Attachment (February 25, 1981 Report of B.P. Huddleston & Co., Inc.) at 3.

Instead of rising as expected, crude oil prices declined. At the time of issuance

¹ See Motion for Reconsideration, filed March 2, 1983, Case No. HER-0050.

² In late 1988, the Unit asked that the Office give no further consideration to its modification request, and stated that the Unit would pursue its objections to the repayment provisions in connection with its FERC appeal.

³ Motion for Modification or Rescission, filed June 24, 1985, Case No. HER-0106.

⁴ In the meantime, the Unit continued to obtain disbursements from, and make payments into, the escrow account. Over the last ten years, the Unit has withdrawn a total of approximately \$39 million, and has deposited a total of approximately \$24 million in tertiary revenues.

⁵ As of October 31, 1991, the market value of the escrow account was \$121,186,878.23.

of the January 1983 Order, the price of Citronelle crude oil had dropped to \$32. January 1983 Order at 82,662. Crude oil prices have trended lower; Citronelle crude oil averaged \$14.99 per barrel in 1988 and \$17.98 per barrel in 1989. See NCNB Texas 1989 Report on Project Implementation Plan, dated March 15, 1990, at 2. Although current prices are higher, they are still far below their 1980 level.

It is clear that the decline in crude oil prices changed the entire economic outlook for the project. The Unit conceded as much in its March 1983 reconsideration request. Although the Unit requested modification of the repayment provisions, the Unit also indicated that, even if its requested modifications were granted, it might still be unwilling to proceed with the project, citing the decline in crude oil prices, as well as the increase in the Alabama severance tax. Unit Motion for Reconsideration at 21. Subsequently, in the March 29, 1983 hearing on the Unit's reconsideration request, the Unit's engineer indicated that the Unit would not have objected to the repayment provisions if high oil prices had continued. Transcript of March 29, 1983 Hearing, Case No. HER-0050, at 51-52. In fact, in response to a question from a member of the hearing panel, another representative of the Unit indicated that the repayment provisions were not objectionable under the crude oil prices projected in 1980. *Id.* at 131-32. Finally, in a subsequent hearing in September 1984, the Unit's engineer stated that, even if the Office were to grant the Unit's requested modifications, the prevailing \$30 per barrel crude oil prices precluded the Unit from making any further capital expenditures on the project. Transcript of September 25, 1984 Hearing, Case No. HER-0050, at 72-73.

At various times, the Unit has submitted proposals to change the repayment provisions. Although the Unit has characterized these proposals as necessary to accomplish the purpose of the exception relief, the DOE agrees with the refiners that these proposals really amount to an increase in the amount of exception relief and are designed to offset the impact of declining crude oil prices on the economic viability of the tertiary efforts. See, e.g., Refiners' December 9, 1987 Submission at 1-3. These proposals must be rejected.

An increase in the level of exception relief designed to offset the impact of lower oil prices on the project is beyond the purpose of the original exception relief. The purpose of the exception relief was not to insure that the Unit

would have an economic incentive to proceed under whatever economic conditions developed. Cf. Wallace and Wallace Chemical and Oil Corp., 2 FEA ¶ 80,855 at 81,020 (exception relief to permit a firm to build a refinery not warranted where the firm's difficulties were the result of general business and financial problems unrelated to a DOE regulatory program). Rather, the purpose of the exception relief was to eliminate an inequity caused by the DOE regulatory program and afford the Unit benefits similar to those obtained by the major integrated oil companies through the tertiary incentive program. Producers participating in the tertiary program could receive \$20 million per property. The DOE gave the Unit the choice of \$22.5 million in tertiary benefits through the tertiary incentive program, or \$83.8 million with a repayment requirement. The DOE offered the alternate form of relief because it was believed to be a form of exception relief that was roughly equivalent to the first form of exception relief and that would address the Unit's pressing need for financing for front-end capital expenditures. January 1983 Order, 10 DOE at 82,640. Accordingly, both the first and alternate forms of relief were designed to accomplish the same goal, i.e., to permit the Unit to obtain benefits comparable to those available to the major integrated oil companies through the tertiary incentive program. The purpose of the relief never was to insulate the Unit from the economic impact of changed economic circumstances on its proposed project.

Since the Unit will not proceed with the project under the current repayment provisions, and a modification of the repayment provisions is unwarranted, the relief must be terminated. As stated above, the Unit and refiners offer the proposed settlement as the means to terminate the proceeding. For reasons discussed later in this Decision and Order, the DOE's full consideration of the proposed settlement leads it to conclude that it cannot be accepted. Accordingly, it is incumbent upon the DOE to provide for an equitable termination of the relief.

Exception relief may be terminated when the factual assumptions underlying the relief prove incorrect. See, e.g., *Highway Oil, Inc.*, 6 DOE ¶ 82,524 (1980) (exception relief in the form of an additional allocation of gasoline to blend gasohol terminated after the firm reduced the level of gasohol operations upon which the relief was based). The January 1983 Order specifically contemplates this circumstance and provides that (i) The

relief may be revoked or modified at any time upon a determination that the factual basis underlying the exception relief is incorrect" and (ii) "appropriate adjustments or remedial action" might be ordered where "the applicant's financial projections are demonstrated to have been materially different from its actual financial results." January 1983 Order, 10 DOE at 82,673 (¶ 12). Exception relief from the DOE regulations is thus never permanent, but always subject to modification in appropriate circumstances. The DOE may take such action *sua sponte*.

An alternative basis exists for withdrawing the Unit's exception relief. The refiners have filed a motion, which is currently pending, to terminate the Unit's relief. Subpart J of the DOE procedural regulations provides for the grant of motions for modification or rescission of a DOE order, where the DOE finds substantially changed circumstances. See 10 CFR 205.135(b).

The pivotal change in circumstances here is clearly evident. Exception relief was granted on the assumption that the Unit would go forward with its proposed tertiary project. At the time, the high existing and projected crude oil prices justified that assumption. As explained above, in December 1980 crude oil prices were \$39 per barrel and expected to rise to \$60. Instead, they fell. The decline has dimmed or extinguished the economic prospects of the proposed project and crippled the Unit's willingness to undertake it under the existing terms. The DOE does not criticize the Unit for being unwilling to proceed under the lower crude oil prices. Nonetheless, the failure of the project to go forward constitutes a fundamental change in the assumptions underlying the grant of relief. Accordingly, the DOE has determined that the exception relief should be terminated in the manner outlined below.

B. Providers for the Termination of Exception Relief

As TECA's affirmation of the DOE's decision to grant exception relief to the Unit recognizes, the DOE has broad discretion in the manner in which it fashions equitable relief. *Exxon Corp. v. DOE*, 802 F.2d at 1407-08, 1413-15. That discretion necessarily extends to the manner in which exception relief is terminated.

The DOE's guiding principle in fashioning a termination relief is that the termination should be tailored, to the extent possible, to minimize the original impact of the relief on affected parties. As the January 1983 Order specifically recognizes, the grant of exception relief

affected (1) The Unit, (2) the refiners, and (3) end-users.

The DOE has determined that the exception relief should be terminated as follows: (1) The escrow account will be closed out in an orderly manner, (2) the Unit will be relieved of any obligation to repay the benefits that it has obtained thus far as a result of the relief, (3) the Office will use subpart V procedures to distribute the escrow account to refiners and end-users. As explained below, this result is fair to the Unit, the refiners and end-users.

In order to accomplish an orderly closing of the escrow account, the DOE has determined that the Unit will be relieved of any obligation to deposit incremental tertiary revenues into the account as of the date of this Decision and Order. Disbursement from the account will be permitted for those expenses incurred through December 31, 1991, that are both permitted under the January 1983 Order and of the type for which the Unit has sought reimbursement in the last year. Any requests for disbursements must be submitted no later than January 31, 1992. The escrow agent will be directed to take the necessary steps to prepare for the closing of the account. The escrow agent will be instructed to close the account on February 15, 1992 and transfer the funds by wire transfer to the DOE Controller on the same date. The DOE Controller will set up a separate, interest-bearing account for the funds, identified as "The 341 Tract Unit of the Citronelle Field, OHA Case No. KEZ-0096" (hereinafter the "refund account"), where the funds shall remain until further order of this Office.

Our determination that the Unit be relieved of any repayment obligation for the benefits that it has received is based on our assessment that those benefits approximate \$20 million.⁶ Thus, relieving the Unit of its repayment obligation will afford it benefits roughly equivalent to (i) The \$20 million in tertiary benefits that the Unit could have received if it had qualified for the tertiary program and (ii) the \$22.5 million in exception relief that it could have chosen in lieu of the alternate form of relief. Accordingly, we believe that

the receipt of any further benefits by the Unit is unwarranted.

As for refiners and end-users, the Office will use subpart V procedures to distribute the refund account, based on the extent to which they absorbed the cost of the relief. The December 15, 1980 Order recognized that refiner-participants in the Entitlements Program could pass through the increased costs of funding the Unit's exception relief to consumers of refined products, see December 15, 1980 Order, 7 DOE at 85,059, and, therefore, that ultimate consumers might bear the cost of the exception relief. The issue of the extent to which refiners absorbed the cost of the Unit's exception relief is best resolved in a subpart V type proceeding. The refiners have contended that their absorption is greater than the absorption range found in the Stripper Well Settlement proceeding. A subpart V type proceeding is the ideal forum for considering and resolving issues of passthrough. See 10 CFR 280 et seq. Accordingly, concurrently with the issuance of this Decision and Order, the DOE is issuing a proposed decision in which it sets forth proposed procedures for a subpart V type proceeding. All interested parties will have an opportunity to comment on these proposed procedures.

C. The Proposed Settlement

As indicated above, prior to making the foregoing determinations, the DOE considered the proposed settlement entered into by the Unit and the refiners. The DOE certainly has the authority to terminate the proceeding pursuant to a settlement. The fact that the settlement might terminate the relief in a manner different from that favored by the DOE is not critical. What is critical is that a settlement must provide for a termination of the relief in a manner that is within a range of reasonableness, given the nature and purpose of the exception relief and its impact on affected parties. The DOE's thorough consideration of the proposed settlement leads it to conclude that it does not meet this standard.

The benefits accorded the Unit in the proposed settlement are too far beyond those conferred in the grant of exception relief. The proposed settlement would relieve the Unit of any obligation to repay the approximately \$20 million in benefits that it has received thus far. In addition, however the Unit would receive approximately \$50.8 million. The Unit would use these funds to implement a scaled-down tertiary project designed to produce approximately 8 million barrels of crude

over a 20 year period; the Unit would have no obligation to repay this amount. As a result of the waiver of the \$20 million debt and the offer of \$50.8 million for a tertiary project, the proposed settlement would allocate a total of \$70.8 million in benefits to the Unit. This level of assistance is considerably in excess of the relief offered in the December 15, 1980 Order, i.e., the choice of a \$22.5 million grant or \$63.8 million subject to a repayment requirement.

Moreover, it is difficult to justify the large amount that the proposed settlement accords refiners. The proposed settlement would allocate to them 40 percent of the funds in the escrow account. This 40 percent allocation of the escrow account constitutes 68 percent of the total allocated to refiners and endusers. This 68 percent allocation is simply too large to accept, in the absence of further consideration of the issue of absorption. End-users, as well as refiners, should have the opportunity to participate in that consideration.

As the foregoing indicates, the DOE has considered the settlement and determined that it is not within a range of reasonableness, given the nature and purpose of the exception relief and its likely impact on affected parties. Accordingly, the DOE has determined that the settlement cannot be approved.

III. Conclusion

As the foregoing indicates, the DOE has determined that an equitable termination of the exception relief granted the Unit is appropriate. As also indicated above, the termination involves (i) the orderly closing of the escrow account, (ii) relieving the Unit of any obligation to repay the \$20 million in net benefits that it has received from the account, and (iii) a further proceeding in which refiners and end-users may claim refunds.

It is therefore ordered that: (1) The exception relief granted The 341 Tract Unit of the Citronelle Field on January 31, 1983, Case No. DEE-0076, is hereby terminated as set forth in Paragraph 2 below.

(2) The termination of the exception relief shall be accomplished as follows:

(a) The Unit shall be relieved of any obligation to repay the approximately \$20 million in net benefits that it has received from the escrow account.

(b) The Unit will be relieved of any obligation to pay incremental tertiary revenues into the escrow account as of the date of this Decision and Order.

(c) The Unit may receive reimbursement for tertiary expenses incurred through December 31, 1991, to the extent that those expenses are

⁶ As stated above, over the course of the last ten years, the Unit has withdrawn approximately \$39 million from the escrow account and paid in approximately \$24 million. The current \$15 million difference ignores the time value of the money and understates the benefit that Citronelle received. As a result of large withdrawals during the early period of exception relief, the outstanding amount has been much larger in the past. If the Unit believes that its benefit was less than \$20 million, the Unit may file a Motion for Reconsideration.

both permitted under the January 1983 Order and of the type for which the Unit has obtained reimbursement in the last year.

(d) All requests for disbursements must be submitted no later than January 31, 1992.

(e) The escrow agent shall take the necessary steps to prepare for the closing of the account.

(f) The escrow agent shall close the account on February 15, 1992 and transfer the funds by wire transfer to the DOE Controller on the same date, and

(g) The DOE Controller shall receive the proceeds of the escrow account and establish a separate account for the funds, identified as "The 341 Tract Unit of the Citronelle Field, OHA Case No. KEZ-0096," where the funds shall remain until further order of this Office.

(3) The Motion for Reconsideration filed by the Unit on March 2, 1983, Case No. HER-0050, is hereby denied.

(4) The Motion for Modification or Rescission filed by Exxon Company, U.S.A., et al. on June 24, 1985, Case No. HER-0106, is hereby granted to the extent set forth in Paragraph 2 above and denied in all other respects.

(5) The Joint Motion filed by the Unit and Exxon Company, U.S.A., et al. on July 12, 1989, Case No. KEZ-0096, is hereby denied.

(6) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the partial denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 CFR part 385, subpart J.

Date: December 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-31167 Filed 12-26-91; 10 a.m.]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4088-9]

Agency Information Collection Activities under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Part B Permit application, Permit Modifications, and Special Permits (ICR No. 1573). This ICR consolidates and reinstates the following six previously approved collections: ICR No. 814, Information Requirements for Hazardous Waste Storage and Treatment Facilities (OMB No. 2050-0009); parts of ICR No. 959, Reporting and Recordkeeping Requirements for Groundwater Monitoring Downgradient Well Amendments (OMB No. 2050-0033); ICR No. 970, Reporting and Recordkeeping for RCRA Permittees (OMB No. 2050-0037); parts of ICR No. 995, Land Disposal Permitting Standards (OMB No. 2050-0007); parts of ICR No. 999, Permit Application Information Requirements for Hazardous Waste Incinerators (OMB No. 2050-0002); and parts of ICR No. 1238, Hazardous Waste Tanks Reporting and Recordkeeping (OMB No. 2050-0050).

Abstract: This ICR is a comprehensive presentation of the information collection activities for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting applications for a part B permit or permit modification, as provided in 40 CFR parts 264 and 270, and details the requirements for: Demonstrations and exemptions from permit requirements, the part B permit application, and permit modifications and special permits.

Applicants must respond to a variety of general reporting and recordkeeping requirements, including record retention, notice of changes, notice of health threat, etc. EPA will use this information to: (1) Issue permits, (2) substantiate information that has been submitted in the permit, (3) assure that facilities are in compliance with the conditions of their permits, and (4) identify instances where permits need to be revised to accommodate new situations.

Burden Statement: The public reporting burden for this collection is estimated to average 183 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste TSDFs.

Estimated Number of Respondents: 982.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 179,560 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 20, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-31154 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-40959-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR # 1049.04. This ICR requests renewal of a currently approved collection (OMB #2050-0046).

Abstract: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) establishes broad Federal authority to respond to releases of

hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA by reference to other environmental statutes, including Clean Water Act (CWA) sections 311 and 307; Clean Air Act (CAA) section 112; the Resource Conservation and Recovery Act (RCRA) section 3001; the Toxic Substances Control Act (TSCA) section 7; and CERCLA section 102(a). There are currently 780 CERCLA hazardous substances, approximately 1,500 radionuclides, and an unspecified number of enlisted RCRA hazardous wastes that are also considered CERCLA hazardous substances. The most recent addition to the CERCLA list of hazardous substances is the 51 hazardous air pollutants listed pursuant to CAA section 112.

Each CERCLA hazardous substance is assigned an RQ which is the quantity of hazardous substance that, when released into the environment, triggers CERCLA section 103 reporting requirements. Section 103(a) requires the person in charge of a facility to immediately notify the National Response Center (NRC) of any hazardous substance release that equals or exceeds its RQ. The information that must be provided to the NRC in the notification includes general background information, such as the location of the incident and the name and address of the discharger, as well as more detailed information about the circumstances surrounding the release, including the type of material(s) released, environmental medium(s) affected, and cause(s) and source(s) of the release. Notification under CERCLA section 103(a) is intended to ensure that Federal authorities receive prompt notification of hazardous substance releases for which a timely response may be necessary to protect public health or welfare or the environment.

Burden Statement: The estimated annual public reporting burden for this collection of information is estimated to average 3.1 hours per release, including time for reviewing regulatory requirements, gathering the required release information, contacting the NRC about the release, and keeping a log.

Estimated No. of Respondents: 52,118 release reports.

Estimated Total Annual Burden on Respondents: 161,566 hours.

Frequency of Collection: On occasion—when a release above the RQ occurs.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460, and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: December 23, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-31155 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4089-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Hazardous Waste Activity (ICR No. 261.08; OMB No. 2050-0028). This is a renewal of a currently approved collection.

Abstract: Any person generating, transporting, and/or operating a facility for storage, treatment, or disposal of hazardous waste must file a notification form with EPA (or an authorized State). The information requested includes the location and general description of hazardous waste activity. EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 3.1 hours per response and includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information.

Respondents: Owners and operators of facilities that generate, transport, or handle hazardous waste.

Estimated Number of Respondents: 11,620.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 36,022 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460,

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 23, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-31156 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00117; FRL-4010-1]

Closure of Carpet Policy Dialogue Deliberations; Receipt of the Carpet Policy Dialogue: Compendium Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA announces the conclusion of the Carpet Policy Dialogue consensus deliberation process and lists the accomplishments attained during the Carpet Policy Dialogue year. EPA has received a Compendium Report from the Carpet Policy Dialogue. The report summarizes the activities of the Carpet Policy Dialogue from August 21, 1990 to September 27, 1991.

DATES: The Carpet Policy Dialogue: Compendium Report (EPA/560/2-91-002) was entered into the Carpet Emissions Administrative Record on December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Dave Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202)554-1404; TDD: (202)554-0557, or FAX (202)554-5603 (document requests only). For further

information on the Carpet Policy Dialogue Project contact Richard W. Leukroth Jr., Carpet Policy Dialogue Coordinator, Telephone: (202)260-1832. Copies of the Executive Summary of the Carpet Policy Dialogue: Compendium Report may be obtained from the Environmental Assistance Division at the address listed above. Copies of the Carpet Policy Dialogue: Compendium Report may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, by requesting publication PB 92-115005.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1990, EPA received a citizen's petition under section 21 of the Toxic Substances Control Act (TSCA) from Local 2050 of the National Federation of Federal Employees (NFFE). The petition sought regulatory action to address carpet emissions. EPA denied the petition (55 FR 17404, April 24, 1990).

In its response to the citizen's petition, the Agency recognized that the combined total of volatile organic compound (TVOC) emissions from new carpet may increase indoor air exposures to VOCs in general, and agreed that, as a matter of policy, "it is prudent to minimize indoor human exposure to VOCs where reasonable." In essence, the Agency decided to apply pollution prevention principles to an exposure source in the indoor air environment. Thus an approach was sought to reduce TVOC exposure in the absence of a well defined health risk. In an effort to further these objectives, EPA convened a policy dialogue (55 FR 31640, August 3, 1990).

II. Carpet Policy Dialogue

EPA convened the Carpet Policy Dialogue on August 21, 1990, and committed to a 1-year effort to: (1) Develop an analytical test method to measure total volatile organic compound emissions (TVOCs) from carpet floor covering products; (2) obtain voluntary agreement by carpet floor covering industries to undertake testing programs to characterize TVOC emissions from these products; (3) examine process engineering aspects of carpet floor covering materials to identify opportunities for VOC emissions reductions from newly manufactured products and associated installation technologies for such products; and (4) provide the interested public with information about TVOCs that emit from new carpet floor coverings. The objective of the Carpet Policy Dialogue was to take practical steps to help

reduce the public's exposure to TVOCs that emit from new carpet floor covering materials.

The Carpet Policy Dialogue involved three Offices within EPA [Office of Toxic Substances (OTS) [now known as the Office of Pollution Prevention and Toxics (OPPT)], Office of Air and Radiation (OAR), and Office of Research and Development (ORD)] and the following organizations: National Institute for Occupational Safety and Health (NIOSH); National Institute of Standards and Technology (NIST); Occupational Safety and Health Administration (OSHA); U.S. Consumer Product Safety Commission (CPSC); U.S. General Services Administration (GSA); American Fiber Manufacturers Association (AFMA); American Federation of State, County and Municipal Employees (AFSME); American Lung Association (ALA); Air Quality Sciences, Inc. (AQS); The Adhesive and Sealants Council, Inc. (ASC); American Society for Testing and Materials, Subcommittee D22.05 on Indoor Air (ASTM); American Textile Manufacturers Institute (ATMI); Carpet Cushion Council (CCC); Carpet and Rug Institute (CRI); Floor Covering Adhesives Manufacturers Committee (FCAMC), of the National Association of Floor Covering Distributors (NAFCD); Floor Covering Installation Contractors Association (FCICA); Georgia Tech Research Institute (GTRI); National Federation of Federal Employees, Local 2050 (NFFE); Research Triangle Institute (RTI); and Styrene Butadiene Latex Manufacturers Council (SBLMC). These organizations worked via a consensus process to address issues and concerns as stated in the EPA charter to the Carpet Policy Dialogue (55 FR 17404, April 24, 1990).

The Carpet Policy Dialogue formed three technical subgroups: Product Testing, Process Engineering, and Public Communications to work out the details of the analytical test method, develop TVOC emissions testing programs for carpet floor covering materials, review available information related to the EPA charter, identify information gaps, and develop draft report materials. During the Dialogue year a series of products gained consensus approval by the Dialogue Workgroup. These agreements paved the way for industry to commit to EPA on voluntary actions to address the objectives set by EPA. The Carpet Policy Dialogue concluded its activities on September 27, 1991.

A. Accomplishments

The Carpet Policy Dialogue made progress in several areas of exposure reduction (pollution prevention) and

industry-wide product stewardship. Manufacturers of carpet floor covering products (i.e., carpet, carpet cushion, carpet installation adhesives, and raw materials such as fibers and styrene butadiene rubber latex), installers of carpet floor covering systems, public health organizations, Federal agencies, and other interested organizations demonstrated a willingness to commit the time and resources to working constructively toward an effective program to understand the role of new carpet, carpet associated products, and carpet installation practices on indoor air quality. The Carpet Policy Dialogue can be credited with the following accomplishments:

1. A standardized small chamber analytical test method was developed to measure TVOC emissions from carpet floor covering products (carpet, carpet cushion, and carpet installation adhesives). With this method TVOC emissions from carpet and related materials can be scientifically measured and compared. The procedure was peer reviewed and submitted to the American Society for Testing and Materials (ASTM) as the basis for a new standard method.

2. Three Carpet Policy Dialogue consensus agreements which outline the design for industry-sponsored voluntary testing programs that will develop information about TVOC emissions from carpet, carpet cushion, and carpet installation adhesives. These agreements include various follow-on activities such as multi-year testing programs, information reporting, industry proposed product certification programs, public communication activities, etc., and recognize that other additional testing may be needed to meet the objectives of the Federal Register notice of April 24, 1990 (55 FR 17404).

3. Four Memoranda of Understandings (MOU) were established between EPA and industry trade associations (Carpet and Rug Institute (55 FR 37913, August 9, 1991), Carpet Cushion Council (55 FR 61245, December 2, 1991), Floor Covering Adhesive Manufacturers Committee (55 FR 61246, December 2, 1991), and Styrene Butadiene Latex Manufacturers Council (55 FR 61247, December 2, 1991)). The first three MOUs formalize the voluntary testing and data reporting programs mentioned above, while the latter MOU provides for the submission of data from ongoing quality analysis programs.

4. A public information brochure ("Indoor Air Quality and New Carpet - What You Should Know") was developed to provide the interested

public with information about TVOCs that emit from new carpet. The brochure identifies steps the public can take to reduce exposure to carpet emissions and lists sources for additional information. Sixteen organizations signed on as participants in developing the brochure. Availability of the brochure will be the subject of an upcoming Federal Register announcement.

5. A Compendium Report was prepared that summarizes the activities of the Carpet Policy Dialogue. The Compendium includes reports from the Product Testing, Process Engineering, and Public Communications subgroups.

The Dialogue can also be credited with numerous additional accomplishments including:

a. Compilation of process engineering information that identified potential control measures that may lead to reduced TVOC emission levels in carpet-related sources in the future.

b. Reinforced a market climate encouraging the accelerated introduction of low-emitting carpet installation adhesives. It is anticipated that such products will dominate the market in coming years.

c. The U.S. General Services Administration (GSA) established an initiative to develop requirements to make low VOC carpet floor covering available for use in Government offices. It is anticipated that a low TVOC carpet could be available from the GSA Federal Supply Schedule for the contract period beginning April 1994, provided adequate technical data are available from the testing program developed by the Carpet Policy Dialogue.

d. The Floor Covering Installation Contractors Association (FCICA) agreed to enhance training programs for installers to include information about indoor air quality, proper installation procedures, and encourage adherence to industry developed installation guidelines.

e. Both the carpet and carpet cushion industries proposed or are in the process of implementing quality assurance product certification programs for TVOC emissions from the various product types manufactured.

The Carpet Policy Dialogue process on TVOC emissions from carpet, carpet cushion, and carpet installation adhesive products is a prime example of multiple EPA offices working effectively with other Federal agencies, industry, and the interested public to achieve needed action on a voluntary basis. It highlights the commitment to action which is an integral part of OPPT's revitalized existing chemicals program and serves as a prototype for future consideration of indoor air and other

issues of exposure reduction (pollution prevention).

B. Post Carpet Policy Dialogue Activities

The close of the Carpet Policy Dialogue on September 27th marks the conclusion of the "Consensus Process" which set in place the series of agreements for testing and information reporting programs mentioned above. These agreements and commitments form the framework by which EPA and the carpet floor covering industry can continue to work together to address scientific questions about TVOC emissions and indoor air quality. Data and information developed from testing programs and other post Carpet Policy Dialogue activities will be submitted to the TSCA Carpet Emissions Administrative Record as they become available.

EPA has committed to technical evaluation of the TVOC test results that will be generated by industry. This evaluation will judge whether these voluntary industry programs have adequately met the objectives outlined in the **Federal Register** (55 FR 17404, April 24, 1990) or if some other approach may be required.

III. Carpet Policy Dialogue - Compendium Report

In conjunction with the public outreach activities of the Carpet Policy Dialogue, a Compendium Report was submitted to EPA. This report summarizes the considerations, deliberations, accomplishments, conclusions, and recommendations reached by the Carpet Policy Dialogue and its various subgroups during the Dialogue year (August 21, 1990 through September 27, 1991). The report is a product of the Public Communications Subgroup of the Carpet Policy Dialogue. It was reviewed and approved for submission to EPA by the Carpet Policy Dialogue Plenary at a meeting held on September 27, 1991.

The Compendium is an assembly of reports from the Carpet Policy Dialogue Plenary Group, and the Product Testing, Process Engineering, and Public Communications Subgroups. The document contains background information about the dialogue process, describes structural organization, and explains the nature of consensus and voluntary actions. It summarizes the activities and products of the three working subgroups, lists accomplishments attributed to the Carpet Policy Dialogue and other activities related to EPA's charge to the Dialogue on TVOC emissions from new carpet floor covering materials. The

report contains eighteen appendices that list Dialogue participants, document various products and agreements, and contains other informative materials relevant to product testing for TVOC emissions.

The EPA submitted the Compendium Report (EPA/560/2-91-002) to the TSCA Carpet Emissions Administrative Record on December 20, 1991. The Carpet Policy Dialogue: Compendium Report may be purchased (\$66.00) from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, by requesting publication PB 92-115005.

IV. Administrative Record

The Carpet Policy Dialogue: Compendium Report is available to the public in the Carpet Emissions Administrative Record. This Administrative Record is available for reviewing and copying in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Dated: December 20, 1991.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 91-31149 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act Property Availability: Packery Pass Land

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Packery Pass Land, located on Mustang Island, Corpus Christi, Texas, is affected by section 10 of The Coastal Barrier Improvement Act of 1990.

DATES: Written notices of serious interest to purchase the property may be mailed or faxed to the Federal Deposit Insurance Corporation until March 30, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained by contacting the following person: Randall Johnson, Federal Deposit Insurance Corporation, Dallas Consolidated Office, 5080 Spectrum Drive, suite 400W, Dallas, Texas, 75248, (214) 701-2400, FAX (214) 991-4958.

SUPPLEMENTARY INFORMATION: The 145 acre property is located on the southern end of Mustang Island, a barrier island, approximately one mile outside of Corpus Christi, Texas. The property is a beach front site facing the Gulf of Mexico, bounded on the west by Zahn Road and on the north by Park Road 53. The property is rectangular in shape, is undeveloped and is surrounded primarily by condominium developments, retail establishments and vacant land. The property is not located within any municipality and is not zoned.

Written notices of serious interest to purchase the property must be received on or before March 30, 1992 by Randall Johnson, Federal Deposit Insurance Corporation, Dallas Consolidated Office, 5080 Spectrum Drive, Suite 400W, Dallas, Texas, 75248, (214) 710-2400, FAX (214) 991-4958.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;
2. Agencies or entities of state or local government; and
3. "Qualified organization" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice: Notices of serious interest should be in the following form: Notice of Serious Interest re: Packery Pass Land, Mustang Island, Corpus Christi, Texas

1. Name of eligible entity.
2. Declaration of eligibility to submit Notice under criteria set forth in Public Law 101-591, section 10(b)(2).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: December 19, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-31027 Filed 12-27-91; 8:45 am]
BILLING CODE 6714-01-M

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions in the State of Oklahoma, the Federal Deposit

Insurance Corporation ("FDIC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county of Oklahoma in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance ("FDI") Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation ("FSLIC"), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Teresa R. Koechel, Deborah N. Biggers, Tommy K. Sears, John H. Fisher, Gary R. Belair, and Deborah J. Hall.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC

any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefore in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property; wherever located; do and perform every act necessary for the use; liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: December 19, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-31028 Filed 12-27-91; 8:45 am]
BILLING CODE 6414-01-M

FEDERAL MARITIME COMMISSION**Agreement(s) Filed; Evergreen Marine Corp. (Taiwan) Ltd., et al.**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011184-004

Title: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A. and Compagnie Generale Maritime Space Charter and Sailing Agreement

Parties: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione S.p.A. Compagnie Generale Maritime

Synopsis: The proposed amendment restates and revises the basic Agreement. The amendment also: (1) Expands the scope of the Agreement to include Portland, Maine and Savannah, Georgia; (2) clarifies existing space chartering and sailing authority; (3) adds new articles pertaining to feeder operations and administrative matters; (4) revises Article 7 (Membership and Withdrawal), Article 9 (Duration and Termination of the Agreement) and Article 14 (Arbitration); and (5) makes other technical changes.

Agreement No.: 207-011341-001

Title: Transroll/Sea-Land Joint Service Agreement

Parties: Transroll Navegacao, S.A. Sea-Land Service, Inc.

Synopsis: The amendment would expand the scope of the Agreement to include Argentina, Uruguay and Paraguay. It would allow the Joint Service to enter into agreements such as connecting carrier, transshipment and space charter; and would make other nonsubstantive changes.

Dated: December 24, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-31123 Filed 12-27-91; 8:45 am]
BILLING CODE 6130-01-M

FEDERAL RESERVE SYSTEM**The First National Company, et al.; Applications to Engage de novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1992.

A. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The First National Company*, Storm Lake, Iowa; to engage *de novo* in making

and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

2. *Fistar Corporation*, Milwaukee, Wisconsin; to engage *de novo* in acting as an investment adviser pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31088 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-F

Garwin McNeilus; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 18, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Garwin McNeilus* to acquire 37.75 percent, *Denzil McNeilus* to acquire 37.75 percent, and *McNeilus Truck and Manufacturing, Inc.*, *McNeilus Companies, Inc.*, and *McNeilus Financial, Inc.*, all of Dodge Center, Minnesota, to acquire 24.50 percent, for a total of 100 percent, of the voting shares of *Mower Agency, Inc.*, Austin, Minnesota, and thereby indirectly acquire *Sterling State Bank*, Austin, Minnesota.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31089 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-F

Mercantile Acquisition Corporation I, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation, Inc., and Mercantile Acquisition Corporation*

I. St. Louis, Missouri; to acquire Ameribanc, Inc., St. Joseph, Missouri, and thereby indirectly acquire American National Bank of St. Joseph, St. Joseph, Missouri; American Bank, Kansas City, Missouri; American Bank of Boone County, Centralia, Missouri; American Bank of Franklin County, Union, Missouri; American Bank of Morgan County, Versailles, Missouri; American Bank of North Central Missouri, Trenton, Missouri; American Bank of Northwest Missouri, Maryville, Missouri; American Bank of Platte County, Kansas City, Missouri; American Bank of St. Louis, St. Louis, Missouri; American Bank of Plattsburg/Edgerton, Plattsburg, Missouri; American Bank of Rolla, Rolla, Missouri. In addition, Mercantile Acquisition Corporation I, St. Louis, Missouri, has applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Ameribank Life Insurance Company, St. Joseph, Missouri, and thereby engage in the reinsurance of credit life, accident, and health insurance sold in connection with extensions of credit made by Ameribanc, Inc.'s subsidiary banks pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Missouri.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31090 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-F

South Arkansas Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 20, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *South Arkansas Bancshares, Inc., Pine Bluff, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of Pine Bluff National Bank, Pine Bluff, Arkansas.*

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Minden Exchange Company, Minden, Nebraska; to acquire 15.7 percent of the voting shares of Midwest Banco Corporation, Cozad, Nebraska, and thereby indirectly acquire First Bank and Trust Company, Cozad, Nebraska; Enders State Bank, Enders, Nebraska; and Bank of Wilbur, Wilbur, Nebraska.*

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31091 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-46]

Quarterly Notice of Health Assessments Completed and Health Assessments To Be Conducted In Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a health assessment, or issued an addendum to a previously completed health assessment, during the period July-September 1991. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL). 2. A list of sites for which ATSDR, during the

same period, has accepted a request from the public to conduct a health assessment (petitioned health assessment). Acceptance for a request for the conduct of a health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a health assessment at the site.

FOR FURTHER INFORMATION CONTACT:

Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E32, Atlanta, Georgia 30333, telephone (404) 639-0610, FTS 236-0610.

SUPPLEMENTARY INFORMATION: A list of completed health assessments, health assessments with addenda, and petitioned health assessments which were accepted by ATSDR during April-June 1991 was published in the *Federal Register* on September 25, 1991, (56 FR 48568). The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604(i)) and appeared in the *Federal Register* on February 13, 1990 (55 FR 5136).

Availability

The completed health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed health assessments are now available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Health Assessments or Addenda Completed or Issued

Between July 1, 1991, and September 30, 1991, health assessments or addenda to health assessments were issued for the NPL sites listed below:

Connecticut
Precision Plating—Vernon—(PB92-106396)
Florida

Davie Landfill—Davie—(PB91-238212)
Indiana
Neal's Dump—Spencer—(PB92-108414)
Iowa
Peoples Natural Gas Company—
Dubuque—(PB92-108307)
Kansas
Doepke Disposal (Holiday Site—Holiday—
(PB92-110592)
New Hampshire
Holton Circle—Londonderry—(PB92-
110584)
New York
Carroll & Dubies—Port Jervis—(PB91-
226290)
South Carolina
Helena Chemical Company Landfill—
Fairfax—(PB92-110600)
Utah
Utah Power & Light/American Barrel Site—
Salt Lake City—(PB91-218576)
Wisconsin
Moss-American Kerr-McGee Oil
Company—Milwaukee—(PB92-108380)

2. Petitions for Health Assessments Accepted

Between July 1, 1991, and September 30, 1991, ATSDR determined that there was a reasonable basis to conduct a health assessment for the sites or facilities listed below in response to requests from the public. As of September 30, 1991, ATSDR initiated health assessments at these sites.

Colorado
Hansen Containers—Grand Junction
Georgia
Basket Creek Drum and Surface
Impoundment Site—Douglas County
Young Refinery—Douglasville
Montana
Burlington Northern—Livingston
New York
Fresh Kills Landfill—Staten Island
Dated: December 23, 1991.
William L. Roper,
Administrator, Agency for Toxic Substances
and Disease Registry.
[FR Doc. 91-31133 Filed 12-27-91; 8:45 am.]
BILLING CODE 4160-70-M

Food and Drug Administration

Relocation of the Center for Veterinary Medicine

AGENCY: The Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the relocation of the Center for Veterinary Medicine (CVM) from its former address, 5600 Fishers Lane, Rockville, MD 20857, to 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Billy Don Weaver, Center for Veterinary Medicine (HFV-10), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8752.

SUPPLEMENTARY INFORMATION: In August 1991, CVM was officially relocated. The address for CVM is hereby changed from 5600 Fishers Lane, Rockville, MD 20857, to 7500 Standish Pl., Rockville, MD 20855.

Dated: December 23, 1991.
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 91-31012 Filed 12-27-91; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of January 1992:

Name: Council on Graduate Medical Education.

Time: January 30, 1992, 8:30 a.m.-12 p.m.; January 31, 1992, 8:30 a.m.-3:30 p.m.

Place: Conference Room G&H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The plenary Council will hear updates from the Office of the Secretary, the Health Resources and Services Administration, the Health Care Financing Administration, the Department of Veterans Affairs and the Executive Secretary. Presentations will be made on the implications for medical education of the activities of the

Johnson, Kellogg, and PEW Foundation; and current directions and activities of the Association of American Medical Colleges and American Medical Association. Reports will be given by the Physician Manpower Subcommittee along with a discussion of the draft discussion paper. Reports will be given by the Medical Education Programs and Financing Subcommittee and the Minority Representation in Medicine Subcommittee.

Anyone requiring information regarding the subject Council should contact Carol Gleich, Ph.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3626.

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.
Time: January 30, 1992, 6:30 p.m.-9 p.m.

Place: Crowne Plaza, Holiday Inn, Parklawn Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: The subcommittee will hear and discuss a presentation from the Association of American Medical Colleges "3000 by 2000" program for increasing minority representation in medicine, and will discuss a draft staff paper.

Anyone requiring information regarding the subject Subcommittee should contact Mr. Lanardo E. Moody, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6326.

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: January 30, 1992, 1 p.m.-5 p.m.

Place: Conference Room H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply &

distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: The Subcommittee will discuss streamlined medical school-residency programs and a revised staff paper on medical education issues and draft conclusions and recommendations.

Anyone requiring information regarding the subject Subcommittee should contact Ms. Debbie M. Jackson, Subcommittee Principal Staff Liaison, or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, Division of Medicine, Bureau of Health Professions, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6326.

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: January 29, 1992, 8:30 a.m.-5 p.m. January 30, 1992, 1 p.m.-5 p.m.

Place: Conference Room G&H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: On January 29 the subcommittee will receive comments from organizations and individuals on a draft discussion paper and on January 30 will discuss the reactions. The paper focuses on conclusions and recommendations concerning the adequacy of the aggregate physician supply and the optimal proportion of generalists in that supply.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6326.

Agenda Items are subject to change as priorities dictate.

Dated: December 20, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-31011 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: January 10, 1992—9 a.m.-4 p.m.

ADDRESSES: Loews Hotel, 1700 Ocean Avenue, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: John A. Butterfield, Executive Director, President's Council on Physical Fitness and Sports, 450 5th Street, NW., suite 7103, Washington, DC, 202/272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order 12345, and subsequent orders. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sports, to report on ongoing Council programs, and to plan for future directions.

Dated: December 23, 1991.

John A. Butterfield,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 91-31073 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-02-4212-13; AZA-23360 C]

Arizona: Exchange of Public and Private Lands

December 19, 1991.

AGENCY: Bureau of Land Management, Interior.**ACTION:** Notice of issuance of exchange documents.

SUMMARY: Notice is hereby given of the completion of an exchange between the United States and Walter E. and Edna M. Biewer. The United States transferred 135 acres in Mohave County, Arizona, and the Biewers transferred 1,094.21 acres of land also in Mohave County, Arizona.

FOR FURTHER INFORMATION CONTACT: Laura Wood, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: On November 21, 1991, the Bureau of Land Management transferred the following described land by Patent No. 02-92-0006 and Deed No. AZ-02-001 pursuant to the Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 29, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ S
W $\frac{1}{4}$;
Sec. 30 S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area comprises 135 acres in Mohave County.

In the exchange for these lands, the following described lands were conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 17 W.,
Sec. 17, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Sec. 19, W $\frac{1}{2}$, of lot 1, lots 2-7 incl., NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
N $\frac{1}{2}$ SE $\frac{1}{4}$.

The area comprises 1,094.21 acres of land in Mohave County.

The values of Federal public land and the non-Federal land in the exchange were appraised at \$931,500.00 and \$930,000.00. An equalization payment in the amount of \$1,500.00 was paid to the United States.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 91-31102 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-32-M

[ID-060-02-4212-13; IDI-26748]

Exchange of Public Lands; ID

AGENCY: Bureau of Land Management, Coeur d'Alene District, Interior.**ACTION:** Notice of realty action; exchange of public lands in Benewah, Shoshone, Kootenai, Bonner and Boundary Counties, Idaho.

SUMMARY: This Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District of the Bureau of Land Management has determined that the following described public lands are suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T.44N., R.2W.,
Sec. 12, N $\frac{1}{2}$ NW $\frac{1}{4}$
T.45N., R.3E.,
Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
T.46N., R.2E.,
Sec. 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$
Sec. 25, E $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
T.52N., R.3W.,
Sec. 19, S $\frac{1}{2}$ NE $\frac{1}{4}$
T.55N., R.2W.,
Sec. 9, lots 1,2, S $\frac{1}{2}$ NE $\frac{1}{4}$
Sec. 32, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
T.55N., R.3W.,
Sec. 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$
Sec. 10, E $\frac{1}{2}$ NE $\frac{1}{4}$
Sec. 15, S $\frac{1}{2}$ NE $\frac{1}{4}$
Sec. 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$
Sec. 18, E $\frac{1}{2}$ E $\frac{1}{2}$
Sec. 23, SE $\frac{1}{4}$ SE $\frac{1}{4}$
Sec. 25, N $\frac{1}{2}$ NW $\frac{1}{4}$
Sec. 26, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$,
SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
Sec. 29, SE $\frac{1}{4}$ NW $\frac{1}{4}$
T.59N., R.1W.,
Sec. 6, lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$
T.59N., R.2W.,
Sec. 6, lot 1,2, S $\frac{1}{2}$ NE $\frac{1}{4}$
T.60N., R.1W.,
Sec. 28, N $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$
T.61N., R.2E.,
Sec. 18, S $\frac{1}{2}$ SE $\frac{1}{4}$

The area described above aggregates approximately 2,266.52 acres in Benewah, Shoshone, Kootenai, Bonner, and Boundary Counties.

In exchange for these lands, the United States will acquire the following described lands:

Boise Meridian, Idaho

T. 49N., R. 3W.,
Sec. 1, Tax Lot #3466, Blk. 15
T.49N., R.1E.,
Sec. 38, lots 4,5,6, SW $\frac{1}{4}$ NW $\frac{1}{4}$ north of
county road

The area described above aggregates approximately 179.65 acres in Shoshone and Kootenai Counties, Idaho.

The purpose of the land exchange is to benefit the public interest by obtaining

important resource values. The public lands to be exchanged are isolated and difficult to manage parcels with limited resource values. The private lands being offered have important values for access, wildlife, and recreation that merit acquisition for public ownership. There are no grazing leases, grazing permits, or range improvements on any of the above described public lands. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange. Final determination on disposal will await completion of an environmental analysis, which will be made available to the public. The value of the lands to be exchanged will be approximately equal.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.
2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The publication of this notice in the *Federal Register* will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), and subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the Coeur d'Alene District Office, 1803 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 19, 1991.

John B. O'Brien III,

Acting District Manager,

[FR Doc. 91-31022 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-920-02-4212-12; AZA-23606]

Arizona; Exchange of Public and State Lands

December 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of exchange documents.

SUMMARY: Notice is hereby given of the completion of an exchange between the United States and the State of Arizona. The United States transferred 3,106.34 acres in Cochise, Graham, LaPaz, and Navaho Counties and the State of Arizona transferred 4,194.000 acres of land in Graham, Mohave, Navaho, and Yavapai Counties.

FOR FURTHER INFORMATION CONTACT:

Mary Jo Yoas, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: On September 6, 1991, the Bureau of Land Management transferred the following described lands to the State of Arizona pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

Patent No. 02-91-0022A, Dated September 6, 1991, Containing 480 acres:

T. 15 N., R. 19 E.,

Sec. 14, NW¼, S½.

Deed No. AZ-91-003A, Dated September 6, 1991, Containing 2,626.34 acres:

T. 5 N., R. 19 W.,

Sec. 2, lots 1 to 4, incl., S½N½, S½.

T. 10 N., R. 16 W.,

Sec. 2, N½N½NE½.

T. 6 S., R. 23 E.,

Sec. 31, lots 1 to 7, incl., NE¼, E½NW¼,

NE¼SW¼, N½SE¼.

T. 7 S., R. 23 E.,

Sec. 2, lots 1 to 4, incl., S½NE¼,

SE¼NW¼, N½SE¼NW¼;

Sec. 6, lots 1 to 6, incl., SW¼NE¼,

SE¼NW¼.

T. 14 S., R. 27 E.,

Sec. 16, SE¼NE¼.

T. 14 S., R. 31 E.,

Sec. 2, lots 3 and 4, S½NW¼, SW¼.

T. 14 S., R. 32 E.,

Sec. 19, N½NE¼;

Sec. 20, N½.

The area described comprises 3,106.34 acres in Cochise, Graham, La Paz, and Navaho Counties, Arizona.

In exchange, the following described lands were conveyed to the United States:

Gila and Salt River Meridian, Arizona

Deed of Reconveyance No. 96-95038, Dated July 21, 1987, Containing 1,280.00 acres:

T. 18 N., R. 20 E.,

Sec. 20, all;

Sec. 28, all.

Deed of Reconveyance No. 96-94354, Dated June 17, 1987, Containing 541.18 acres.

T. 9 N., R. 9 W.,

Sec. 32, lots 1 to 10, incl., E½NE¼,

NW¼NW¼, SW¼SW¼, SW¼SE¼,

E½SE¼.

Deed of Reconveyance No. 96-94353, Dated June 17, 1987, Containing 2,361.76 acres:

T. 31 N., R. 11 W.,

Sec. 2, S½N½, N½SW¼, SW¼SW¼,

SE¼.

T. 33 N., R. 12 W.,

Sec. 31, all.

T. 33 N., R. 13 W.,

Sec. 2, lots 1 to 4, incl., S½N½, S½

(Surface only).

T. 34 N., R. 12 W.,

Sec. 32, all (Surface only).

Deed of Reconveyance No. 96-95570, Dated April 29, 1988, Containing 11.46 acres:

T. 7 S., R. 25 E.,

Sec. 24, That portion of the W½NW¼NE¼ lying north of Golf Course Road.

The area described comprises 4,194.00 acres in Graham, Mohave, Navaho, and Yavapai Counties, Arizona.

The purposes of this Notice is to inform the public and interested State and local government officials of the exchange of public and State land.

This exchange finalizes actions between the Bureau of Land Management and the State of Arizona. Title acceptance provides a final accounting of our long term exchange program.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 91-31103 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-32-M

[UT-080-02-4410-08]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Resource Management Plan/Environmental Impact Statement for the Diamond Mountain Resource Area, Vernal District, Utah.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610, a draft resource management plan/environmental impact statement (RMP/EIS) for the Diamond Mountain Resource Area, Vernal District, Utah, has been prepared and is available for

review and comment. The draft RMP/EIS describes and analyzes future options for managing approximately 709,000 acres of public land and 853,000 acres of federal mineral estate in Daggett County, Duchesne County, and portions of Uintah County, in northeastern Utah. It also examines the designations of Areas of Critical Environmental Concern (ACECs) and Wild and Scenic Rivers.

Decisions generated during this planning process will supersede land use planning guidance presented in the Browns Park, Diamond Mountain, and Ashley-Duchesne Management Framework Plans (MFPs) including the land exchange amendment, as well as land use guidance for the Diamond Mountain Resource Area contained in the 1986 Vernal District Off-Road Vehicle Designation Plan, the 1981 Vernal District Oil and Gas Environmental Assessment, and the 1984 Myton Bench Oil and Gas Developments Environmental Assessment. The draft RMP/EIS affects only those parts of the following documents involving forage allocation and assignment of leasing categories in the Diamond Mountain Resource area: Three Corners Grazing EIS, Ashley Creek Grazing EIS, Uintah Basin Synfuels Development EIS and Utah Combined Hydrocarbon Leasing EIS.

Copies of the draft RMP/EIS may be obtained from the Vernal District Office. Public reading copies will be available for review at the public libraries in Duchesne and Uintah Counties, the Daggett County Office Building, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC.

Office of External Affairs, Utah State Office, 324 South State Street, Salt Lake City, Utah.

Vernal District Office, 170 South 500 East, Vernal, Utah.

Background Information and maps used in developing the draft RMP/EIS are available at the Vernal District Office.

An open house will be held on Wednesday, Thursday and Friday, January 22, 23, and 24, 1992, at the Vernal District Office, 170 South 500 East, Vernal, Utah, from 3 p.m. until 8 p.m. Additional open houses will be scheduled as follows:

Salt Lake City, Olympus Hotel, 161 West 600 South, 5 p.m.-8 p.m., Tuesday, January 28, 1992.

Duchesne, City Office Building Council
Room, 165 South Center Street, 5 p.m.-
8 p.m., Wednesday, January 29, 1992.
Manila, County Office Building, 5 p.m.-8
p.m., Thursday, January 30, 1992.

The public is invited to present
written comments and questions
concerning the draft RMP/EIS to be
considered in the final RMP/EIS.
Comments must be received in the
Vernal District Office within 90 days
after publication of EPA's notice in the
Federal Register.

FOR FURTHER INFORMATION CONTACT:
Penelope Smalley, Team Leader, Bureau
of Land Management, 170 South 500
East, Vernal, Utah 84078; Phone (801)
739-1362.

SUPPLEMENTARY INFORMATION: The draft
RMP/EIS analyzes five alternatives to
resolve the following three issues:
Resource uses affecting vegetation, soils
and watershed values, special
management areas, and resource
availability and accessibility. Each
alternative represents a complete
management plan for the area. The
alternatives can be summarized as (A)

no action or current management, (B)
ecological systems, (C) forage
production, (D) resource development,
and (E) the preferred alternative, which
is an optimal mix of management
choices from the other four alternatives.
Various combinations of special
designations are analyzed under the
alternatives.

ACECs Considered

Seven ACECs were considered for
designation. The acreage of these units
varies among alternatives and is
displayed on the following table:

Area name	Critical concerns	Acreage by alternative				
		A	B	C	D	E
Browns Park Complex (includes existing Green River Scenic Corridor ACEC and Crouse Canyon).	Crucial deer winter range, scenic values, unique cultural and historic values, Class I trout fishery, riparian values, special status plant and animal habitat (bald eagle, peregrine falcon, Colorado cutthroat trout, river otter, and Ute Ladies' Tresses).	19,400	55,700	19,400	19,400	55,700
Lears Canyon	Relict vegetation community	0	1,400	1,400	0	1,400
Middle and Lower Green River	Special status animal and plant species habitat (bald eagle, peregrine falcon, whooping crane, western yellow-billed cuckoo, Swainson's hawk, western snowy plover, long-billed curlew, white-faced ibis, spotted bat, river otter, Uinta Basin hookless cactus, Colorado Squawfish, humpback chub, bonytail chub, razorback sucker), scenic values and natural characteristics.	0	12,700	0	0	7,900
Nine Mile Canyon	Cultural resources (Fremont rock art and occupational sites), special status plant habitat (Toad-flax cress and Uinta Basin hookless cactus).	0	50,800	0	0	47,400
Pariette Wetlands	Riparian systems, biological diversity associated with wetlands, special status plant habitat (Uinta Basin hookless cactus).	0	11,600	0	0	11,600
Red Creek	Watershed, riparian potential, fragile soils, Colorado River salinity control.	24,400	24,400	24,400	0	24,400
Red Mountain-Dry Fork Complex	Cultural and paleontological values, relict vegetation communities (Castle Cove and Red Mountain proper), scenic values, riparian system.	0	25,800	2,200	0	25,800

Wild and Scenic Rivers

The following river segments eligible
for further study as Wild and Scenic

Rivers were analyzed by the RMP/EIS

and found either suitable or not suitable
for designation:

Water segment	Values present	Suitable?
Upper Green River	Special status fish species, scenic values, cultural resources, wildlife values and riparian systems	Yes for scenic.
Middle Green River	Special status fish species, riparian systems	No.
Lower Green River	Special status fish species, recreation values, and riparian systems	Yes for scenic.
Nine Mile Creek—East	Scenic values, cultural resources, and riparian systems	No.
Nine Mile Creek—West	Scenic values, cultural resources, and riparian systems	No.
Argyle Creek	Scenic values and riparian systems	No.

Public participation has occurred
throughout the RMP process. A Notice of
Intent was filed in the Federal Register
in January 1989. Since that time several
workshops, meetings and mailings were
conducted to solicit comments and
ideas. Any comments presented
throughout the process have been
considered.

This notice meets the requirements of
43 CFR 1610.7-2 for designation of
ACECs.

Dated: December 23, 1991.

W. R. Papworth,

Acting State Director.

[FR Doc. 91-31119 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-930-4214-10; AZA-26099]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

December 20, 1991.

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of
Agriculture, Forest Service, has filed

application AZA-26099, to withdraw 2,087.04 acres of National Forest System lands from location and entry under the mining laws for the purpose of protecting the Research Ranch from possible mineral development. This application is in compliance with regulations found in 43 CFR 2310.1-2 and the Coronado National Forest Plan. Publication of this notice closes the land for up to 2 years from location and entry under the United States mining laws only, the land will remain open to all other uses applicable to National Forest System lands.

DATE: Comments and requests for a meeting should be received on or before March 30, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, (602) 640-5509.

SUPPLEMENTARY INFORMATION: On November 29, 1991, the U.S. Department of Agriculture, Forest Service, filed application AZA-26099 to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Coronado National Forest

- T. 21 S., R. 18 E.,
 Sec. 26, W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 33, E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 34, All;
 Sec. 35, Lot 6, W $\frac{1}{2}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ N
 E $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ S
 E $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 22 S., R. 18 E.,
 Sec. 2, Lots 2, 3, 4, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$,
 SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$
 Sec. 3, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$,
 N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.
 Sec. 4, Lot 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains approximately 2,087.04 acres in Cochise County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned

officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with regulations as set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws.

The temporary segregation of the lands in connection with this application shall not affect the administrative jurisdiction over the lands.

Sue E. Richardson,

Acting Deputy State Director Lands and Renewable Resources.

[FR Doc. 91-31104 Filed 12-27-91 8:45 am]

BILLING CODE 4310-32-M

[OR-943-4214-10; GP2-073; OR-47602]

Partial Termination of Proposed Withdrawal and Reservation of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has canceled its application in part to withdraw certain lands for protection of the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area in the Mt. Hood National Forest. This action will terminate a portion of the proposed withdrawal.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-0039, 503-280-7171

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of Agriculture, Forest Service, application OR-47602 for withdrawal was published as FR Doc. 91-23811 of the issue of October 3, 1991. The purpose of the proposed withdrawal is to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area. The applicant agency has determined that a portion of the proposed withdrawal is no longer

needed and has canceled the application insofar as it effects the following described lands:

Willamette Meridian

Mt. Hood National Forest

- T. 7 S., R. 5 E.,
 Sec. 14, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
 E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 26, that portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
 Sec. 27, that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
 Sec. 34, that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
 Sec. 35, that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

The areas described aggregate approximately 184.00 acres in Clackamas County, Oregon.

Pursuant to the regulation 43 CFR 2310.2-1(c), at 8:30 a.m., on January 29, 1992 the proposed withdrawal will be terminated in part. The lands described above that are not within the Bull of the Woods Wilderness Area will be opened to operation of mining laws.

The lands remaining in withdrawal application OR-47602 are described and amended to read as follows.

Willamette Meridian

Mt. Hood National Forest

- T. 7 S., R. 5 E.,
 Sec. 14, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
 SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
 S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ S
 E $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 23, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
 W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$,
 E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,
 SW $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
 Sec. 24 SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 25, W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
 and NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 26, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, and that portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
 Sec. 27, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ outside the Bull of the Woods Wilderness Area as more particularly identified and described in

the official records of the Bureau of Land Management, Oregon State Office;
 Sec. 34, that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
 Sec. 35, that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Offices.

The area described contains approximately 1936.00 acres in Clackamas County, Oregon.

Dated December 17, 1991

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-311210 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-077; OR-47417]

Public Meeting; Illinois River Proposed Protective Withdrawal; Oregon

AGENCY: Bureau of Land Management.
ACTION: Notice.

SUMMARY: This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding the Forest Service's application for protective withdrawal of a 13-mile portion of the Illinois River.

EFFECTIVE DATE: February 19, 1992.

FOR FURTHER INFORMATION CONTACT:

Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the application by the Forest Service, U.S. Department of Agriculture, for a 20-year protective withdrawal as to 4,239.95 acres of national forest lands under and adjacent to the Illinois River. The lands involved are in the Siskiyou National Forest in Josephine County, Oregon, and are located between the mouth of Briggs Creek and the mouth of Deer Creek.

The meeting will begin at 7 p.m., Wednesday, February 19, 1992, at the Siskiyou National Forest Headquarters Office, 200 NE Greenfield Road, Grants Pass, Oregon. The agenda will include: (1) An information briefing by the Bureau of Land Management; (2) an information briefing by the Forest Service; (3) oral statements by interested parties; and (4) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Oregon State Office. Oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management and the Forest Service before any recommendation concerning the proposed land withdrawal is submitted to the Secretary of Interior for final action under the authority of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: December 17, 1991.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-31121 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-072; OR-47602]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw an additional 70.00 acres of National Forest System land to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area in the Mt. Hood National Forest. Because this notice amends the original application, the two year temporary segregation from mining will expire on October 3, 1993. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by March 30, 1992.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-0039.

FOR FURTHER INFORMATION CONTACT:

Linda Sullivan, BLM, Oregon State Office, 503-280-7171.

SUPPLEMENTARY INFORMATION: On December 4, 1991, the U.S. Department of Agriculture, Forest Service, filed an amendment to the original application to withdraw the following described additional National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,

Sec. 25, W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

The area described contains 70.00 acres in Clackamas County, Oregon.

The purpose of the proposed withdrawal is to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Because this is an amendment to the original application, the two year temporary segregation will expire on October 3, 1993. The land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: December 17, 1991

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-31023 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with

Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS

for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Marathon Oil Company, one exploratory well, SEA No. R-2739.....	High Island Area, East Addition, South Extension, Block A-386, Lease OCS-G 9159, 118 miles southeast of the nearest coastline in Jefferson County, Texas.	July 29, 1991.
Sandefer Offshore Operating Company, structure removal operations, SEA No. ES/SR 91-009A.	East Cameron Area, Block 128, Lease OCS-G 5366, 36 miles south of Cameron Parish, Louisiana.	July 11, 1991.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-017A.	East Cameron Area, Block 26, Lease OCS-G 3527, 12 miles south of Cameron Parish, Louisiana.	June 10, 1991.
UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-018.	West Cameron Area, Block 595, Lease OCS-G 2437, approximately 112 miles south of Cameron Parish, Louisiana.	June 10, 1991.
Sandefer Offshore Operating Company, structure removal operations, SEA No. ES/SR 91-019.	East Cameron Area, Block 129, Lease OCS-G 3534, approximately 36 miles south of Cameron Parish, Louisiana.	May 8, 1991.
Diamond Shamrock Offshore Partners, structure removal operations, SEA No. ES/SR 91-025.	Brazos Area, Block 412, Lease OCS-G 5003, approximately 12 miles southeast of Matagorda County, Texas.	May 22, 1991.
Diamond Shamrock Offshore Partners, structure removal operations, SEA No. ES/SR 91-027.	West Cameron Area, Block 192, Lease OCS-G 4757, approximately 30 miles south of Cameron Parish, Louisiana.	May 24, 1991.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-032.	South Timbalier Area, Block 50, Lease OCS-G 4119, approximately 10 miles south of Lafourche Parish, Louisiana.	July 26, 1991.
Kerr-McGee Corporation, structure removal operations, SEA Nos. ES/SR 91-033, 91-036, 91-037, 91-038, and 91-039.	Ship Shoal Area, Block 28, Lease OCS 0346, 5 miles southeast of Terrebonne Parish, Louisiana.	Aug. 7, 1991.
ODECO Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-044, 91-045, and 91-067.	South Timbalier Area, Block 86, Leases OCS 0605 and OCS-G 1555, approximately 20 miles south of Lafourche Parish, Louisiana.	June 20, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-046.	South Timbalier Area, Block 135, Lease OCS 0462, approximately 28 miles south of Lafourche Parish, Louisiana.	May 12, 1991.
Energy Development Corporation, structure removal operations, ES/SR 91-047.	Main Pass Area, Block 96, Lease OCS-G 5243, approximately 12 miles southeast of the Breton Island National Wildlife Refuge and Wilderness Area in Louisiana.	Apr. 16, 1991.
Samedan Oil Corporation, structure removal operations, SEA No. ES/SR 91-048.	Brazos Area, Block A-28, Lease OCS-G 2659, approximately 40 miles south of Matagorda County, Texas.	Aug. 12, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-049.	High Island Area, South Addition, Block A-416, Lease OCS-G 3946, approximately 82 miles south of Jefferson County, Texas.	May 7, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-059.	Sabine Pass Area, Block 11, Lease OCS-G 4191, approximately 11 miles southeast of Jefferson County, Texas.	July 8, 1991.
Apache Corporation, structure removal operations, SEA No. ES/SR 91-060.	Matagorda Island Area, Block 636, Lease OCS-G 5001, approximately 22 miles east/southeast of Aransas County, Texas.	Aug. 2, 1991.
Mesa Limited Partnership, structure removal operations, SEA Nos. ES/SR 91-061 and 91-028/S.	High Island Area, East Addition, South Extension, Block A-315, Lease OCS-G 2786, approximately 97 miles southeast of Galveston County, Texas.	Sept. 6, 1991.
ODECO Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-064 and 91-065.	High Island Area, East Addition, Block 119, Lease OCS-G 4739, approximately 30 miles south of Cameron Parish, Louisiana.	June 5, 1991.
General Atlantic Resources, structure removal operations, SEA No. ES/SR 91-066.	Vermilion Area, Block 52, Lease OCS-G 1119, approximately 12 miles southeast of Vermilion Parish, Louisiana.	Aug. 8, 1991.
General Atlantic Resources, structure removal operations, SEA Nos. ES/SR 91-068S, 91-081A, 91-082A, and 91-085A.	Vermilion Area, Block 52, Lease OCS-G 1119, approximately 14 miles south of Vermilion Parish, Louisiana.	Sept. 11, 1991.
Houston Oil and Minerals Corporation, structure removal operations, SEA Nos. ES/SR 91-069 through 91-074.	Vermilion Area, Block 50, Lease OCS-G 3392, approximately 18 miles south of Vermilion Parish, Louisiana.	July 26, 1991.
Enron Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-075.	East Cameron Area, Block 65, Lease OCS-G 4416, approximately 22 miles southwest of Cameron Parish, Louisiana.	Aug. 8, 1991.
Freeport-McMoRan Inc., structure removal operations, SEA No. ES/SR 91-076.	High Island Area, East Addition, South Extension, Block A-289, Lease OCS-G 2728, approximately 73 miles south of Cameron Parish, Louisiana.	Sept. 12, 1991.
Phillips Petroleum Company, structure removal operations, SEA Nos. ES/SR 91-077 and 91-078.	West Cameron Area, Block 118, Lease OCS-G 0757, approximately 21 miles south of Cameron Parish, Louisiana.	July 26, 1991.
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 91-079.	West Cameron Area, Block 21, Lease OCS-G 1352, approximately 4 miles south of Cameron Parish, Louisiana.	July 31, 1991.
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 91-080.	West Cameron Area, Block 56, Lease OCS 0301, approximately 8 miles south of Cameron Parish, Louisiana.	Sept. 11, 1991.
Union Pacific Resources, structure removal operations, SEA Nos. ES/SR 91-083 and 91-084.	East Cameron Area, Block 106, Lease OCS-G 8644, approximately 27 miles southwest of Cameron Parish, Louisiana.	Aug. 23, 1991.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-086.	Main Pass Area, Block 19, Lease OCS-G 1622, approximately 15 miles southwest of Breton National Wildlife Refuge, Louisiana.	July 26, 1991.
Freeport-McMoRan Inc., structure removal operations, SEA Nos. ES/SR 91-087 through 91-099.	Vermilion Area, Block 25, Lease OCS-G 12859, approximately 3 miles south of Vermilion Parish, Louisiana.	Aug. 23, 1991.
Mitchell Corporation, structure removal operations, SEA No. ES/SR 91-100.	Galveston Area, Block 189, Lease OCS 0092, approximately 10 miles southeast of Galveston County, Texas.	Aug. 22, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA ES/SR 91-101.	South Timbalier Area, Block 21, Lease OCS 0263, approximately 6 miles south of Lafourche Parish, Louisiana.	Sept. 10, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 91-102 through 91-105.	West Cameron Area, Block 48, Lease OCS-G 1351, approximately 4 miles south of Cameron Parish, Louisiana.	Sept. 20, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-106.	West Cameron Area, Block 91, Lease OCS-G 4387, approximately 13 miles south of Cameron Parish, Louisiana.	Sept. 20, 1991.

Activity/operator	Location	Date
Texaco USA, structure removal operations, SEA Nos. ES/SR 91-108, 91-109, and 91-110.	South Marsh Island Area, Blocks 212, 217, and 218, Lease OCS 0310, approximately 4 miles southwest of the Marsh Island Wildlife Refuge in Iberia Parish, Louisiana.	Sept. 27, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-111.	West Cameron Area, Block 204, Lease OCS-G 3964, approximately 39 miles south of Cameron, Louisiana.	Oct. 3, 1991.
BP Exploration Inc., structure removal operations, SEA No. ES/SR 91-026S.	Eugene Island Area, South Addition, Block 315, Lease OCS-G 2112, approximately 88 miles south of St. Mary Parish, Louisiana.	July 2, 1991.
Forest Oil Corporation, structure removal operations, SEA No. ES/SR 91-029/S.	Eugene Island Area, South Addition, Block 326, Lease OCS-G 5517, approximately 90 miles south of St. Mary Parish, Louisiana.	July 17, 1991.
ODECO Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-30/S and 91-31/S.	Green Canyon Area, Block 21, Lease OCS-G 5879, approximately 112 miles south of Terrebonne Parish, Louisiana.	Aug. 13, 1991.
Marathon Oil Company, structure removal operations, SEA Nos. ES/SR 91-32/S, 91-33/S, 91-34/S, and 91-35/S.	Vermilion Area, Block 331, Lease OCS-G 2572, approximately 97 miles south of Vermilion Parish, Louisiana.	Aug. 13, 1991.
Amerada Hess Corporation, structure removal operations, SEA Nos. ES/SR 91-36/S and 91-37/S.	North Padre Island Area, Block A-43, Lease OCS-G 8076, approximately 30 miles east of Kleberg County, Texas.	Sept. 10, 1991.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: December 18, 1991.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS
Region.

[FR Doc. 91-31105 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31973]

Arthur T. Walker Estate Corporation and Dumaines—Continuance in Control Exemption—Mountain Laurel Railroad Company

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts, subject to standard labor protective conditions, Arthur T. Walker Estate Corporation (Walker), a Delaware corporation, and Dumaines, a New Hampshire trust, from the requirements of 49 U.S.C. 11343, *et seq.*, for their continuance in control of a newly formed corporation, Mountain Laurel Railroad Company (MLRR), when it becomes a rail carrier. Dumaines owns all of the stock of Walker and a controlling interest in Amoskeag Company. Walker owns all of the stock of the new corporation and of two existing class III railroads, Red Bank Railroad Company and Pittsburgh & Shawmut Railroad Company. Amoskeag Company controls class II railroad Bangor and Aroostook Railroad Company through a subsidiary. MLRR is purchasing 127.75 miles of rail line in western Pennsylvania from Consolidated Rail Corporation from Lawtonham (M.P. 6.0) to Driftwood (M.P. 110.0); and from Piney (M.P. 104.25) to Brookville (M.P. 128.0). MLRR will separately file a notice of exemption for that transaction in Finance Docket No. 31974.

DATES: This exemption will be effective on December 31, 1991. Petitions to reopen must be filed by January 9, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 31973 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William P. Quinn, Rubin Quinn Moss Heaney & Patterson, PC, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5267. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359 [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: December 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-31097 Filed 12-27-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-41]

Michael J. Schnitzer, M.D.; Revocation of Registration

On April 4, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Schnitzer, M.D. (Respondent), of 4437 Robbins Street, San Diego, California 92122, proposing to revoke his DEA Certification of Registration, AS2919542, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the

Respondent's continued registration is inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing in a letter dated May 21, 1990. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Sacramento, California, on February 21, 1991. On July 15, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on August 22, 1991, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that sometime in 1988 a New York-based wholesale mail-order drug company reported to DEA that Respondent had made two unusual purchases of controlled substances. As a result, a DEA Investigator requested information from DEA's Automation of Reports and Consolidated Order System (ARCOS) and from two of Respondent's drug suppliers. On the basis of the ACROS report and records provided by the drug suppliers, the Investigator ascertained that in 1986 Respondent purchased 500 diazepam 10 mg. tablets and 500 acetaminophen with codeine tablets. For the period between May 1987 and May 1988, Respondent purchased the following controlled substances: 4,000 dextroamphetamine 10 mg. tablets; 2,500 diazepam 10 mg. tablets; 220 ml. of diazepam injectable 5 mg.; 25 ml. of phenobarbital; 200 cc. of Demerol 100 mg. injectables; 20 cc. of Numorphan 1.5 mg. injectables; 700 cc. of morphine sulfate 1/4 gr. injectables; 200 APAP with codeine 60 mg. tablets; 200 cc. of Talwin 30 mg. injectables; 500 acetaminophen with codeine 1 gr. tablets; and 20 ml. of Sublimaze.

On August 9, 1988, DEA investigators interviewed Respondent concerning his purchases of controlled substances. Respondent told the Investigators that from July 1986 to April 1987 he was employed at a hospital in La Brea, California, and that he resigned that position in order to accept employment with a physician in El Cajon, California, on April 1, 1987. Respondent said that he left that position after two weeks and had been unemployed since April 14, 1987.

During the interview, Respondent further stated that he had planned to open a pediatric clinic and had ordered controlled substances for use in his practice. Respondent said that he stored the drugs first at his brother's home and then at this parents' residence. In June 1988, having been unsuccessful in obtaining a loan to open his practice, Respondent said that he flushed the drugs down the toilet at his parents' residence. Respondent further stated that there were no witnesses to the drug destruction.

At the administrative hearing, Respondent testified that he had never been disciplined by any professional regulatory body, nor had he ever been disciplined by the medical boards of California or Michigan, the states in which he is currently licensed to practice. Further, Respondent testified that he had never been disciplined by any of the hospitals in which he held staff privileges.

With respect to the controlled substance purchases in 1987 and 1988, Respondent testified that he ordered the drugs because he planned to use them when he opened his private practice in pediatric medicine and surgery and pediatrics. Respondent applied for loans to finance his establishment of a practice, but was unable to obtain credit. He further testified that he searched for office space.

Concerning the drug storage and destruction, Respondent testified, in part, that in April 1988 he was living at his parent's home and the drugs were stored there. On May 11, 1988, Respondent found the cardboard box of drug ripped apart. He confronted his father who admitted breaking into the box and who said that he did not want the drugs stored in his home. Respondent testified that he then decided to take the controlled substances to the police station in La Mesa, California. On the way, he stopped at a gas station, and flushed the pills down the toilet. Respondent said he took a steel toolbox and smashed all of the drug vials. Respondent further testified that he destroyed all of the records of his drug purchases and that he was unaware of the federal recordkeeping regulations.

The administrative law judge found Respondent to be less than credible on many aspects of his testimony and listed several reasons why Respondent's purchases of controlled substances should be viewed with suspicion. First, Respondent ordered substantial quantities of similar drugs. Second, in slightly less than one year Respondent

ordered 2,500 dosage units of diazepam 10 mg. tablets; 220 ml. of diazepam 5 mg. injectable; 700 cc. of morphine; 200 cc. of Talwin; and 4,000 dosage units of dextroamphetamine 10 mg. Respondent failed to produce any credible evidence as to why he needed such a large quantity of controlled substances as an initial inventory. Third, Respondent's ordering pattern of certain drugs was consistent with depletion and consequent restocking of controlled substances rather than building an initial inventory. For example, Respondent ordered 1,000 dosage units of diazepam 10 mg. on May 20, 1987, and then ordered 500 tablets of the same drug in the same dosage units on February 18, 1988, and 1,000 tablets on March 1, 1988. Similarly, Respondent ordered diazepam injectable on June 8, 1987, February 18, 1988, and March 1, 1988. Further, Respondent ordered 200 cc. of morphine sulfate on June 8, 1987, and 500 cc. on November 5, 1987, and that invoice for the second order bore the instructions, "Urgent, to be shipped next day air, (cust will pay diff)."

The administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent's registration is clearly inconsistent with the public interest.

Under 21 U.S.C. 823(f) and 824(a)(4), the Administrator has the authority to revoke a registration based upon a sufficient showing that the continued registration would be inconsistent with the public interest. The factors which are considered in determining whether the continued registration would be inconsistent with the public interest are:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority;
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances;
- (5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator make findings with respect to all five of the listed factors. Instead, the Administrator has the

discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case, in determining the public interest. See Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); England Pharmacy, 52 FR 1674 (1987); and Felix Seisin, M.D., Docket No. 85-53, 51 FR 3863 (1986).

In this case, the second, fourth and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether the continued registration of Respondent is contrary to the public interest. The Administrator finds that the evidence relating to Respondent's handling of controlled substances to be overwhelmingly negative. The testimony and evidence presented at the administrative hearing show that the Respondent used his DEA registration to obtain controlled substances for reasons outside the scope of legitimate medical practice. It is undisputed that Respondent ordered a substantial quantity of various controlled substances in 1987 and 1988, and that he was unemployed when most of the drugs were purchased. It is also undisputed, and the record amply demonstrates that Respondent totally ignored the regulations regarding recordkeeping and the storage, security, and disposal of controlled substances. While the Respondent flatly refuses to acknowledge that any of his handling of controlled substances was less than responsible, the Administrator finds that the Respondent egregiously abused his privileges as a DEA registrant to obtain controlled substances for other than legitimate medical purposes.

After considering the evidence in the record, the Administrator concludes that the Respondent's continued registration would be inconsistent with the public interest, and that Respondent's DEA registration must be revoked. Therefore, under the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration hereby orders that DEA Certificate of Registration AS2919542, be, and it hereby is, revoked. Any pending applications for registration or renewal are hereby denied.

This order is effective January 29, 1992.

Dated: December 19, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Compensation for Ex-Servicemembers

General Administration Letter No. 3-92 for Implementing Statutory Amendments Affecting the Program of Unemployment Compensation for Ex-Servicemembers

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102-164), which in title III contains amendments to the Unemployment Compensation for Ex-Servicemembers (UCX) program. On November 22, 1991, the Department issued General Administration Letter (GAL) No. 3-92. The provisions in section 301 of Public Law 102-164, as interpreted in GAL No. 3-92, supersede the prior provisions of Federal law, the regulations at 20 CFR part 614, and prior operating instructions implementing the UCX program, to the extent that they are inconsistent with the amendments in section 301 of Public Law 102-164 or the operating instructions in GAL No. 3-92. GAL No. 3-92 is published below.

Signed at Washington, DC on December 20, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Directive: General Administration Letter No. 3-92

To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management

Subject: Unemployment Compensation for Ex-Servicemembers (UCX) Amendments Contained in the Emergency Unemployment Compensation Act of 1991

1. Purpose

To provide States and cooperating State agencies with the operating, fiscal and reporting instructions for implementing the UCX amendments contained in section 301 of Public Law (Pub. L. 102-164).

2. References

The Emergency Unemployment Compensation Act of 1991, Public Law. 102-164, signed by the President on November 15, 1991; TWX to Regional Administrators, dated November 18, 1991; 5 U.S.C. 8502 and 8521; and 20 CFR Part 614.

3. Background

This document furnishes information concerning section 301 of Public Law 102-164 which amends the UCX program and provides the Department's interpretation of the amendments as they affect the UCX program. This document also sets forth operating instructions of the Department of Labor to guide the States in implementing the amendments.

The provisions in section 301 of Public Law 102-164, as interpreted by these instructions, supersede the prior provisions of Federal law, regulations at 20 CFR part 614, and prior operating instructions issued by this Department to the extent that they are inconsistent with section 301 of Public Law 102-164 or these instructions.

The instructions in this document are issued to the States and cooperating State agencies as guidance provided by the Department of Labor in its role as the principal in the UCX program. As agents of the United States, the States and cooperating State agencies may not vary from the operating instructions in this document (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor. Therefore, pending the issuance of final regulations implementing the provisions of the UCX amendments, the operating instructions in this document (and any subsequent and supplemental operating instructions) shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the provisions of the UCX amendments pursuant to the agreements between the States and the Secretary of Labor under 5 U.S.C. 8502. The provisions of 20 CFR 614.1(d) shall apply to the carrying out of the instructions in this document and any subsequent or supplemental operating instructions.

Section 301(c) of Public Law 102-164 provides that the UCX amendments contained in section 301 are effective for weeks of unemployment beginning on or after November 15, 1991, the date of enactment of Public Law 102-164. This means that the UCX amendments contained in Section 301 shall be effective for all UCX initial claims filed for weeks of unemployment beginning on or after November 15, 1991, as well as for weeks of unemployment beginning on or after November 15, 1991 for unexpired UCX claims. Furthermore, the Department interprets that the amendment in Section 301(b) of Public Law 102-164 applies to previously denied UCX claims of reservists who had less than 180 but at least 90 days of continuous active duty in a reserve status, for weeks of unemployment beginning on or after November 15, 1991. Although the application of the UCX amendments in sections 301(a) and 301(b) to unexpired UCX amendments shall only be applicable for weeks of unemployment beginning on or after November 15, 1991 as provided by section 301(c).

The general rule is that State law is followed on procedural matters (i.e., claims filing, determinations, and redeterminations) unless inconsistent with Federal law. Here, it would be inconsistent with Federal law to apply State time limitations on claims filing, determinations, and redeterminations. It is Congress's intent to cover Desert Shield and Desert Storm veterans under the UCX amendments made by section 301 of Public Law 102-164. The effective date of the UCX amendments as provided in the language of section 301(c) carries out the Congressional intent. Section 301(c) clearly provides that the UCX amendments apply to weeks of

unemployment, rather than to new claims filed, on and after the date of enactment. Furthermore, the Congressional Record regarding these amendments expresses Congress's intent to include Desert Shield and Desert Storm veterans in the amendments' coverage. The only way to extend the UCX amendments to Desert Shield and Desert Storm veterans is to require States and cooperating State agencies to redetermine all UCX claims for claimants who have an unexpired benefit year after November 15, 1991. Thus, this Federal law authority will ensure a uniform application of the UCX amendments as intended by Congress. States and cooperating State agencies will also redetermine previously denied UCX claims of reservists who had less than 180 but at least 90 days of continuous active duty in a reserve status if such claimant would have an unexpired benefit year after November 15, 1991. Further, States and cooperating State agencies will not apply State law claims filing provisions to reservists who did not previously file UCX claims because they had less than 180 days of continuous active duty in a reserve status.

Once a UCX claimant meets the qualifying requirements of 5 U.S.C. 8521, as amended by section 301 of Public Law 102-164, it is the Congressional intent to treat UCX claimants for weeks of unemployment beginning on or after November 15, 1991 under the same terms and conditions as apply to claimants covered under the applicable State UI law.

The UCX amendments contained in section 301 of Public Law 102-164 do not require a revision to the existing UCX State agreements.

4. Amendments and Operating Procedures to Implement the Amendments

a. Section 301(a)

Amended Law: Section 301(a) repeals 5 U.S.C. 8521(c) and thus removes the 4-week waiting period and 13-week maximum amount of UCX benefits payable in a benefit year. Therefore, the UCX waiting period and maximum amount of benefits payable in a benefit year will be the same as provided under the applicable State's UI law as if the claimant's "Federal service" and "Federal wages" had been included as employment and wages under the State law.

Administration: The amendment made by section 301(a) applies to all weeks of unemployment beginning on or after November 15, 1991. This means that the provisions of section 301(a) shall be applied to all UCX first (initial) claims filed for weeks of unemployment beginning on and after November 15, 1991. In addition, effective for weeks of unemployment beginning on or after November 15, 1991, States and cooperating State agencies, consistent with the requirements of section 5 of this GAL, shall apply the amendment of section 301(a) of Public Law 102-164 and redetermine all existing UCX claims in which the claimant's benefit year has not expired.

In applying the amendment of Section 301(a) to active UCX claims, the States and cooperating State agencies shall ensure that UCX claimants in active claims status (including those claimants currently serving the waiting period) receive a monetary

redetermination reflecting the application of the amendment repealing 5 U.S.C. 8521(c).

In order to apply the amendment of section 301(a) to claimants having an unexpired benefit year, the States and cooperating State agencies shall take appropriate actions to identify and inform UCX claimants having an unexpired benefit year of the change in Federal law which could potentially result in additional eligibility for UCX claimants. Such actions should include a search of the agency's files and an announcement in newspapers of general circulation and other appropriate media. When the claimant files a claim for weeks of unemployment beginning on or after November 15, 1991, during an unexpired benefit year or during a period where benefits are affected by the monetary determination of the parent UCX claim (see EXAMPLE 6. in this section 4.a. of this directive), the claimant will be issued a monetary redetermination reflecting the application of the amendment repealing 5 U.S.C. 8521(c). The procedures contained in EXAMPLE 6. of this Section 4.a. reflect the Congressional intent to treat UCX claimants under the same terms and conditions as apply to claimants covered under applicable State law for weeks of unemployment beginning on and after November 15, 1991.

Examples—1. Ex-servicemember files UCX first (initial) claim on November 12, 1991. The State shall redetermine the claim and apply the UCX amendments made by section 301 of Public Law 102-164 for all weeks of unemployment beginning on and after November 15, 1991.

2. Ex-servicemember files UCX first (initial) claim on November 18, 1991. The State shall apply the amendments made by section 301 of Public Law 102-164 for all weeks of unemployment beginning on and after November 15, 1991.

3. UCX claimant on November 15, 1991, has served 2 weeks of the former UCX 4-week waiting period. State law has a one-week waiting period. The State will issue the claimant a monetary redetermination applying section 301(a) of Public Law 102-164 for all weeks of unemployment beginning on and after November 15, 1991. The claimant would have already served the applicable State law waiting period, so if the claimant is otherwise eligible, UCX payments shall begin with the first week of unemployment beginning on or after November 15, 1991.

4. UCX claimant has served the former UCX 4-week waiting period and has received 5 weeks of benefits for weeks of unemployment beginning before November 15, 1991, and is still unemployed. The State will issue the claimant a monetary redetermination applying section 301(a) of Public Law 102-164 for all weeks of unemployment beginning on and after November 15, 1991. However, no payments of UCX shall be made for any weeks of the waiting period since such weeks occurred prior to the effective date of Section 301(a).

5. UCX claimant has exhausted 13-week entitlement before November 15, 1991, is still unemployed, and has an unexpired benefit year. Upon the filing of a claim by the claimant, the State will issue the claimant a monetary redetermination applying section 301(a) of Public Law 102-164 for all weeks of

unemployment beginning on and after November 15, 1991. Also, if eligible, the State will issue UCX payments to the claimant for all weeks of unemployment until the end of the claimant's monetary entitlement or benefit year ending date, whichever occurs first.

6. UCX claimant has exhausted the monetary entitlement after March 1, 1991, and the benefit year before November 15, 1991, and is still unemployed. The claimant is not subject to the UCX amendments in so far as being eligible for additional weeks of UCX. However, the claimant may be eligible for emergency unemployment compensation (EUC) benefits (in a "reachback" State) if otherwise entitled. In such case, the State shall redetermine the claim applying the UCX amendments in section 301(a) of Public Law 102-164 to determine the number of weeks that the claimant would have received UCX as if his/her benefit year had not expired. This redetermined (but unpaid) claim will then be used in computing the EUC entitlement under section 102(b)(1) of Public Law 102-164.

b. Section 301(b)

Amended Law: Section 301(b) amends 5 U.S.C. 8521(a) by reducing the amount of active duty needed in a reserve status from 180 continuous days to 90 continuous days in order for such period of active duty in a reserve status to be considered "Federal service" for UCX qualifying purposes. No other provisions of 5 U.S.C. 8521(a) are amended by section 301(b). Therefore, this amendment only affects reservists who serve in active duty in a reserve status.

Administration: The amendment made by section 301(b) applies to all weeks of unemployment beginning on or after November 15, 1991. This means that the amendment made by section 301(b) shall be applied to all UCX first (initial) claims for weeks of unemployment beginning on and after November 15, 1991. In addition, effective for weeks of unemployment beginning on or after November 15, 1991, States and cooperating State agencies, consistent with the requirements of section 5. of this GAL, shall: (1) Take UCX first (initial) claims for weeks of unemployment beginning on or after November 15, 1991 for reservists who had not previously filed a UCX claim because they had less than 180 days continuous service in active duty in a reserve status; and (2) redetermine all UCX claims denied to reservists solely because the claimant had less than 180 but at least 90 days of continuous service. This claims filing and redetermination requirement shall be applied to reservists who have (or would have had but for not filing a UCX claim because of the former 180-day requirement) an unexpired benefit year for the first week of unemployment beginning on or after November 15, 1991. State law provisions regarding back dating of claims shall be applied to the UCX first (initial) claims filed by reservists as the result of the amendment made by section 301(b).

In order to apply the amendment made by section 301(b) to reservists whose UCX claims were denied solely because they had

less than 180 but at least 90 days of continuous service, the States and cooperating State agencies shall take appropriate actions to identify and inform those denied UCX claimants. Such actions should include the search of agency files. In addition, States and cooperating State agencies shall announce in newspapers of general circulation and other appropriate media the application of the amendment made by section 301(b). This is especially important because many reservists may have not previously filed UCX claims because they did not have 180 continuous days of active duty in a reserve status. It is also important that the newspaper and media announcements include information about how certain State law claims filing and redetermination time limitations provisions are not applicable to UCX claims filed by reservists affected by the amendments made by section 301(b).

Examples—1 UCX claim filed by a reservist in April 1991, was denied solely because claimant served less than 180 (but more than 90 days) in continuous active duty in a reserve status. (If the claim had been approved, the benefit year would have expired April 1992.) The claimant is currently unemployed. The State shall search its files to attempt to locate and contact the claimant. The State shall also announce in newspapers and other media the application of the amendment made by section 301(b). When the previously denied claimant files a claim, such claim will be redetermined applying the amendment made by section 301(b), and, if eligible, UCX payments shall be made for weeks of unemployment which begin on and after November 15, 1991, for the remainder of the claimant's benefit year.

2. UCX claim never filed by a reservist who was discharged from active duty in a reserve status in April 1991 because the reservist has less than 180 continuous days of service. (If the claim had been approved, the benefit year would have expired April 1992.) The reservist is currently unemployed. The State shall announce in newspapers and other media the application of the amendment made by section 301(b). When the reservist files a UCX first (initial) claim, such claim will be determined by applying the amendment made by section 301(b), and, if eligible, UCX payments shall be made for weeks of unemployment which begin on and after November 15, 1991, for the remainder of the claimant's benefit year. The provisions of the applicable State law will be applied regarding back dating of the claimant's UCX first (initial) claim.

3. UI claim filed by a reservist in June 1991, based solely on civilian employment prior to activation for Operation Desert Storm. Military service and wages were not assignable because the claimant served less than 180 (but more than 90 days) in continuous active duty in a reserve status. The claimant is currently unemployed. The State shall search its files to attempt to locate and contact the claimant. The State shall also announce in newspapers and other media the application of the amendment made by section 301(b). When the claimant files a claim for a week of unemployment beginning on or after November 15, 1991, such claim

will be redetermined applying the amendment made by section 301(b). If eligible, the claimant will have a joint UCX/UI claim for weeks of unemployment beginning on and after November 15, 1991, for the remainder of the claimant's benefit year. The State shall make appropriate adjustments to the benefit charges of the joint UCX/UI claim reflecting the application of the amendment made by section 301(b) for weeks of unemployment beginning on and after November 15, 1991, for the remainder of the claimant's benefit year.

4. Joint UCX/UI claim filed by a reservist in June 1991 is denied because the claimant served less than 180 (but more than 90 days) in continuous active duty in a reserve status. The claimant had insufficient civilian employment and wages prior to activation in order to monetarily qualify for UI. The individual is currently unemployed. The State shall search its files to attempt to locate and contact the claimant. The State shall also announce in newspapers and other media the application of the amendment made by section 301(b). When the claimant files an initial claim (either UCX or joint UCX/UI) on or after November 15, 1991, the State shall apply the amendment made by section 301(b) to determine if the claimant is entitled to UCX (or joint UCX/UI) benefits. The State shall apply the provisions of 5 U.S.C. 8521(a), as amended by section 301(b) of Public Law 102-164, and the provisions of applicable State law (i.e., base period wage and employment requirements) to determine if the claimant is eligible for UCX (or joint UCX/UI) benefits.

c. Section 301(c)

Amended Law: Provides that the amendments contained in section 301 of Public Law 102-164 are effective for weeks of unemployment beginning on or after November 15, 1991.

Administration: States and cooperating State agencies shall take appropriate action to ensure that the UCX amendments in section 301 of Public Law 102-164 only apply to weeks of unemployment beginning on or after November 15, 1991. This means that all UCX determinations, redeterminations, and decisions on appeal which involve weeks of unemployment beginning on and after November 15, 1991 shall reflect the UCX amendments contained in section 301 and the Department's controlling instructions contained in this GAL. UCX determinations, redeterminations, and decisions on appeal involving weeks of unemployment beginning before November 15, 1991 shall not reflect the UCX amendments contained in section 301. Therefore, any determinations or redeterminations issued as required by sections 4.a. and 4.b. of this GAL shall only be applied to weeks of unemployment beginning on or after November 15, 1991. Newspaper and media announcements will contain language concerning the effective dates of the UCX amendments.

5. Claims Filing, Determinations, and Redeterminations

a. Claims filing. First (initial) and weekly claims for UCX shall continue to be filed in the established manner, applying the State

law on procedural matters (except where inconsistent with the provisions of Federal law, regulations at 20 CFR part 614, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the UCX amended provisions of Public Law 102-164, regulations at 20 CFR part 614, the controlling operating instructions and regulations issued by this Department, including paragraphs (a) and (b) of 20 CFR 614.5 and paragraph (a) of 20 CFR 614.6.

b. Determinations. Determinations for UCX shall continue to be made in the established manner, applying the State law on procedural matters (except where inconsistent with the provisions of Federal law, regulations at 20 CFR part 614, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the amended UCX provisions of Public Law 102-164, regulations at 20 CFR part 614, the controlling operating instructions and regulations issued by the Department, including paragraphs (a), (b), (d), (e), (f), and (g) of 20 CFR 614.6.

c. Redeterminations. Redeterminations of claims for UCX shall continue to be made in the established manner applying the State law on procedural matters (except where inconsistent with the provisions of Federal law, regulations at 20 CFR part 614, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the amended UCX provisions of Public Law 102-164, regulations at 20 CFR part 614, and the controlling operating instructions and regulations issued by the Department, including paragraphs (c), (d), (e), (f), and (g) of 20 CFR 614.6.

For these purposes, the State UI law includes judicial decisions of the courts of the State in comparable UI cases as well as State statutory provisions, and thus is the same as the "State law" which is relevant for conformity and compliance purposes under title III of the Social Security Act and the Federal Unemployment Tax Act. However, the authority to file claims, and to issue determinations and redeterminations applying the UCX amendments uniformly derives from section 301(c) of Public Law 102-164 rather than State law. No departure from these rules shall be undertaken in any circumstances without the prior approval of the Department of Labor.

6. Fiscal Instructions: Requesting and Certifying UCX Administrative Funds. UI administrative requirements relating to the filing of UCX first (initial) claims and the redetermination of UCX claims as a result of the requirement of section 301 of Public Law 102-164 will be funded through the contingency funding process.

a. Staff years earned for UCX first (initial) claims as the result of section 301(b) of Public Law 102-164 will be computed using the States regular initial claim Minutes Per Unit (MPU). This information should be included on line 1 of the regular program UI-3 worksheet, Section B. Staff years used for this activity should be included on line 1, section A.

b. Staff years earned for redetermination of UCX claims as the result of section 301 of Public Law 102-164 will be computed by using an MPU value of no more than 25 minutes; States have the option to use a lesser value MPU if they deem appropriate. This information should be included on line 5 of the regular program UI-3 worksheet, section B. Staff years used for this activity should be included on line 1, section A.

7. *Reporting instructions.* Weeks claimed, nonmonetary determinations, and appeals resulting from these redeterminations will be included with the regular UI workload reports and on the regular UI-3 worksheet. UCX first (initial), weeks claimed, nonmonetary determinations, and appeals will be included in the regular UI workload reports and on the regular UI-3 worksheet.

8. *Drawdowns from the unemployment trust fund.* Drawdown procedures for UCX payments are not changed. Funds must be requisitioned via the State Unemployment Data System (SUDS). The funds will be transferred to the State benefit payment accounts in the normal fashion (via FEDWIRE, no later than the day after the request).

9. *Action required.* States are required to implement the provisions of the UCX amendments contained in section 301 of Public Law 102-164 in accordance with the controlling operating instructions contained in this GAL. States are required to:

a. Inform all appropriate staff of the requirements in this GAL.

b. Take appropriate actions to identify and inform UCX claimants having unexpired benefit years of the Department's interpretation of the requirements of section 301(e) of Public Law 102-164.

c. Announce in a newspaper of general circulation and appropriate media the enactment and the Department's interpretations of the UCX amendments contained in section 301 of Public Law 102-164. The announcements shall include mention of the authority under section 301 of Public Law 102-164 and State UI law to issue redeterminations applying the UCX amendments as provided in sections 4. and 5. of this GAL.

d. Take appropriate actions to redetermine all UCX claims with respect to which the decisions on ex-servicemembers' eligibility are inconsistent with the operating instructions in this GAL, and take appropriate action to correct any real or potential underpayments of UCX benefits.

e. Take appropriate actions to apply the amendments of section 301(a) and section 301(b) to all UCX initial claims for weeks of unemployment beginning on or after November 15, 1991.

10. *Inquiries.* Direct inquiries pertaining to this GAL to appropriate Regional Office.

[FR Doc. 91-31135 Filed 12-27-91 8:45 am]

BILLING CODE 4510-30-M

MARTIN LUTHER KING FEDERAL HOLIDAY COMMISSION

Business Meeting

December 24, 1991

Notice of a business meeting of The Martin Luther King, Jr. Federal Holiday Commission.

The Martin Luther King, Jr. Federal Holiday Commission will hold a business meeting on Monday, January 13, 1992, from 2 p.m. to 4 p.m. in the Rayburn House Office Building, rm. 2188 (Gold Room). Seating is limited to the space available.

Leonard Burchman,
Treasurer

[FR Doc. 91-31122 Filed 12-27-91, 8:45 am]

BILLING CODE 4210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/876-0282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a

personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code

1. Date: January 10, 1992

Time: 9 a.m. to 5 p.m.

Room: 315

Program: This meeting will review Reference Materials Tools and Guides applications in American Studies, submitted to the Division of Research Programs for projects beginning after July 1, 1992.

2. Date: January 13, 1992

Time: 9 a.m. to 5 p.m.

Room: 315

Program: This meeting will review Reference Materials Tools and Guides applications in Asia and Middle Eastern Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

3. Date: January 13-14, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 415

Program: This meeting will review applications for Preservation and Access, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1992.

4. Date: January 16-17, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 415

Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program received during the December 6, 1991 deadline, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

5. Date: January 16-17, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 430

Program: This meeting will review applications for Preservation and Access programs, submitted to the Division of Preservations and Access, for projects beginning after July 1, 1992.

6. Date: January 17, 1992

Time: 9:00 a.m. to 5 p.m.

Room: 315

Program: This meeting will review Reference Materials Tools and Guides applications in American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

7. Date: January 21, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 315

Program: This meeting will review applications to the Humanities, Science and Technology Program for project in History of Science, Technology and Medicine, submitted

to the Division of Research Programs, for projects beginning after July 1, 1992.

8. Date: January 23, 1992

Time: 9 a.m. to 5 p.m.

Room: 315

Program: This meeting will review Reference Materials Tools and Guides applications in Literature, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

9. Date: January 23-24, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 415

Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs received during the December 6, 1991 deadline, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

10. Date: January 24, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 315

Program: This meeting will review applications to the Collaborative Projects and Humanities, Science, and Technology Programs for projects in Philosophy, Ethics, and Religious Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

11. Date: January 27, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 315

Program: This meeting will review applications to the Collaborative Projects Program for projects in Old World Archaeology, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

12. Date: January 28, 1992

Time: 9 a.m. to 5 p.m.

Room: 315

Program: This meeting will review Reference Materials Tools and Guides applications in European Studies and General Reference Tools, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

13. Date: January 30-31, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 415

Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program received during the December 6, 1991, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

14. Date: January 31, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 315

Program: This meeting will review applications to the Collaborative Projects Program for projects in Literature, Film, Theater, and Art, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

15. Date: January 31, 1992

Time: 8:30 a.m. to 5 p.m.

Room: 430

Program: This meeting will review applications for Preservation and Access, submitted to the Division of Preservation and

Access, for projects beginning after July 1, 1992.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 91-31142 Filed 12-27-91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Alabama Power Co.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF-2 and NPF-8 issued to Alabama Power Company (the licensee) for operation of Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP), located in Houston County, Alabama.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would include provisions in Technical Specifications (TS) 5.3, Reactor Core, which allow for an increase in reload fuel enrichment from 4.3 weight percent U-235 to a nominal 5 weight percent U-235, and a change in reactor core fuel type to include Westinghouse Optimized Fuel Assemblies (OFA) and VANTAGE-5 fuel assemblies, in addition to the currently authorized Westinghouse Low Parasitic (LOPAR) fuel. In addition, TS 5.6, Fuel Storage, is revised to allow for storage of Westinghouse OFA and VANTAGE-5 fuel assemblies.

The proposed action is in accordance with the licensee's application for amendment dated July 1, 1991, as supplemented October 18, 1991.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enrichment to a nominal 5.0 weight percent Uranium 235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff concluded that such changes

would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 megawatt days per metric ton Uranium, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the *Federal Register* (53 FR 30355) on August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously

consideration in the Final Environmental Statement related to operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated July 1, 1991, as supplemented by letter dated October 18, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 20th day of December 1991.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31127 Filed 12-27-91 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.59(a)(2) to Northeast Nuclear Energy Company (NNECO/the licensee), for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

Title 10 of the Code of Federal Regulations at § 55.59(a)(2) requires that all licensed reactor operators "Pass a comprehensive requalification written examination and an annual operating test." By application dated December 13, 1991, the licensee requested a 3-month extension to allow for the completion of

the dynamic portion of the 1991 annual operating examination, for 14 licensed reactor operators, by March 31, 1992.

The proposed action is in accordance with 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated December 13, 1991.

The Need for the Proposed Action

The proposed action will have no incremental impact relative to current practice because the exemption will permit the subject individuals to continue their licensed operator status at Millstone Unit 1.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would result in the subject individuals losing their status as licensed operators at Millstone Unit 1.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for Millstone Unit 1 dated June 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption date December 13, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, the 23rd day of December 1991

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31126 Filed 12-27-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 8, 1992, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 8, 1992—4:30 p.m. until 6:30 p.m.

The Subcommittee will discuss items proposed for consideration by the full Committee and other issues as appropriate.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Raymond F. Fraley (telephone 301/492-4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 23, 1991

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-31125 Filed 12-27-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027-MLA Sequoyah Fuels Corp. (Source Materials License No. SUB-1010)]

Receipt of Supplemental Petition for Director's Decision; Sequoyah Fuels Corp.

Notice is hereby given that by Supplemental Petition for Emergency and Remedial Relief dated November 15, 1991, Kathy Carter-White, Esq., on behalf of Citizens' Action for a Safe Environment (CASE), requested the U.S. Nuclear Regulatory Commission (NRC) to (1) Issue a temporary order staying the restart of Sequoyah Fuels Corporation's (SFC) operation of the Sequoyah Fuels facility (facility) under NRC License No. SUB-1010 and (2) revoke the license because of the "licensee's unfitness to operate a facility." (Supplemental Petition at 1). Petitioner seeks relief based on allegations of gross negligence in the operation of the facility, willful violations of License SUB-1010, erosion of licensing conditions to a meaningless level, and SFC ignoring such conditions as have been imposed until absolutely forced to fix things. Specifically, the Petitioner alleges that:

(1) The name change from "New Sequoyah Fuels Corporation" to "Sequoyah Fuels Corporation" was intended to shield Sequoyah Fuels International, the holding company, from liability for the acts of Sequoyah Fuels Corporation—the licensee in prior years; as a result, in the event of a forced cleanup, attorneys responsible for identifying primarily responsible parties will have a tougher time of properly identifying the Parent Corporation.

(2) The segregation of the process laboratory from the environmental laboratory results in an isolated testing environment not accurately reflecting the true radiological conditions at the facility and is an admission that background levels are so high as to influence environmental samples;

(3) SFC withdrew its plan for redrafting its "Solid Waste" plan and notice was not given to interested parties of the revision;

(4) A March 12, 1990, requested revision substituted Hydrogen (H_2) for dissociated ammonia in the Barium Treated Uranium Raffinate Solvent Extract being soil farmed on the 10,000 acre Monsanto Ranch, thereby significantly increasing fire risk within the facility; in addition, because the ammonia was the beneficial component in the Raffinate, surface application should be regulated as a waste stream

and not as a beneficial "byproduct" of the process;

(5) The September 7, 1990, license amendment request to reduce SFC's onsite emergency exercises from annual to biennial is unwarranted, in light of the 1986 release of uranium hexafluoride into the atmosphere, because SFC did not identify what percentage of Plan cooperating agency personnel have never been through a drill; and

(6) On 9/11/89, Chapter 5 revisions were made, which (A) Do not appear in the license and increased the facility's permissible effluent discharge of Fluoride in violation of the Clean Water Act, (B) set Nitrate discharge levels at double the maximum permissible level allowed for public and private drinking water supplies, and (C) reduced monitoring frequency for wells, allowing the facility to continue to weaken its permit with less frequent modifications.¹

Because the Petition does not give any basis for the request for immediate relief, that portion of the request is denied. In addition, Items 1 through 6 above do not provide a basis for granting immediate relief. With regard to Item 1, the name change has no bearing on the safety of the facility. Items 2, 3, and 4 did not require licensing action and do not correctly characterize the changes that were actually made by the licensee. The change in the emergency plan from annual to biennial drills, as alleged in Item 5, does not affect the safety of the facility during routine operations and is a change that was allowable under the current regulations. Item 6, concerning the revisions to Chapter 5, did not change any of the NRC-licensed discharge levels. The reduction in sampling frequency of monitoring wells does not affect the safety of plant operations. Therefore, the six items referred to by the Petitioner do not provide any basis for immediate relief. In addition, the Petitioner's request for immediate relief is moot in light of the "Order Modifying License (Effective Immediately) and Demand for Information" (Order) that the NRC issued on October 3, 1991 (56 FR 51421, October 11, 1991). The Order provides, in part, the SFC shall not operate the Sequoyah facility to produce Uranium Hexafluoride or Depleted Uranium Tetrafluoride until SFC obtains NRC approval of the plan and schedule to review the adequacy of the Health & Safety and Environmental Programs.

¹ In addition, Petitioner asked the Staff to inquire whether "Radium limits should not be set by Oklahoma, since Gross Alpha maximums would subsume these." Petitioner does not give further explanation of this matter.

The schedule is to indicate which procedures will be reviewed, revised (as necessary), and implemented prior to restart. (Order at section VI B)

The Staff will review the Supplemental Petition in accordance with 10 CFR 2.206 together with Petitioner's "Limited Appearance Intervention and Objection to Renewal" dated July 1, 1991, which the Atomic Safety and Licensing Board presiding over the Sequoyah Fuels Corporation license renewal proceeding (ASLBP No. 91-623-01-MLS) referred to the Staff pursuant to 10 CFR 2.1205(k)(2) (see 56 FR 43946, September 5, 1991). As provided by 10 CFR 2.206, appropriate action will be taken with regard to the Petition and Supplemental Petition within a reasonable time.

Copies of the Petition and the Supplemental Petition are available for inspection in the Commission's Public Document Room located at 2120 L Street, NW., Washington, DC 20555 and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Dated at Rockville, Maryland, this 23d day of December 1991

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-31130 Filed 12-27-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027 Sequoyah Fuels Corp.; Sequoyah Fuels Facility License No. SUB-1010]

Receipt of Petition for Enforcement Action Against Sequoyah Fuels Corporation

Notice is hereby given that by Petition dated November 27, 1991, Diane Curran, on behalf of Native Americans for a Clean Environment and the Cherokee Nation, has requested that the Commission take immediate enforcement action with regard to the Sequoyah Fuels Corporation (SFC) facility. Specifically, Ms. Curran requests that the Commission immediately revoke the operating license for the Sequoyah Fuels facility or, in the alternative, withhold authorization to restart the plant until: (1) Completion of a formal adjudicatory hearing on whether the plant can be operated safely and in compliance with its license and NRC safety and environmental regulations; (2) access is provided to the Petitioners to certain internal SFC documents; (3) SFC undertakes a "truly independent" audit

of its management and operations; and (4) SFC is required to complete and implement all changes to management and procedures that are necessary to assure safe operation of the facility. In addition, Ms. Curran requests that the NRC provide notice in the **Federal Register** of all proposed amendments to SFC's license, if and when SFC is permitted to resume operation.

By Commission Memorandum dated December 9, 1991, the Petition has been referred to the NRC staff for action pursuant to 10 CFR 2.206.

Ms. Curran alleges, as bases for these requests, that: (1) SFC's license renewal application contains material false statements of fact relating to ground water contamination at the site, and numerous documents indicate that SFC has long been aware of serious uranium contamination at the site that had the potential for offsite migration, but deliberately chose to ignore and withhold the information from the NRC; (2) the NRC's Order Modifying License (Effective Immediately) and Demand for Information (Issued October 3, 1991) constitutes the third time in five years that the NRC has cited SFC for a serious breakdown in plant management, however, the Order is inadequate to reasonably assure safe operation of the plant, and the experience of the past five years demonstrates that SFC is doomed to repeat its unsafe and environmentally hazardous practices until the basic causes of its poor environmental and safety record are resolved; (3) SFC has been given and wasted numerous chances to address and resolve its serious safety and environmental problems, at the expense of public safety and the environment, and, even now, it is not apparent that SFC has taken the NRC's enforcement action seriously.

By letter dated December 23, 1991, the Director, Office of Nuclear Material Safety and Safeguards (NMSS), has denied Ms. Curran's request for immediate action. As provided by § 2.206, appropriate action will be taken on the remainder of this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Dated at Rockville, Maryland this 23 day of December 1991

For the Nuclear Regulatory Commission
Robert M. Bernero,
Director, Office of Nuclear Material Safety
and Safeguards.

[FR Doc. 91-31129 Filed 12-27-91; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval of a Collection of Information Under the Paperwork Reduction Act; Form 5500 Series—Annual Report of Employee Benefit Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve an extension of the expiration date of a currently approved information collection (1212-0026) without any change in the substance or in the method of collection. Current approval expires on February 29, 1992. The information collection is contained in the IRS/DOL/PBGC Form 5500 series. These forms are used by pension plan administrators to fulfill the requirements under section 4065 of ERISA and 29 CFR Part 2611 that an annual report be filed with the PBGC. The effect of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212-0026), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22500), 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility

over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

Section 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1365) and 29 CFR part 2611 require the administrator of a defined benefit pension plan to file an annual report with the Pension Benefit Guaranty Corporation (PBGC) in order that PBGC may monitor the plans' yearly operations insofar as they relate to the termination insurance program under title IV of ERISA. Other provisions in ERISA and the Internal Revenue Code (29 U.S.C. 1021(b)(4) and 26 U.S.C. 6058) require that annual reports be filed by administrators of employee benefit plans (including defined benefit pension plans) with the Department of Labor (DOL) and the Internal Revenue Service (IRS) for similar monitoring with respect to the ERISA requirements within their respective jurisdictions. DOL, IRS, and PBGC have established joint forms (the Form 5500 series) to be used for those annual reports.

When the appropriate form in the 5500 series is filed with the IRS, the filing requirement for each of the three agencies is satisfied; each agency utilizes the information applicable to it. In addition to general identifying information, the PBGC uses the coverage information reported on Form 5500 or Form 5500-C/R, and the actuarial information on Schedule B attached to the form, to fulfill its monitoring role.

OMB has previously approved the PBGC's collection of information contained in the Form 5500 series; PBGC is requesting an extension of that approval without any change in the substance or method of collection. The PBGC estimates that it will receive 146,524 reports annually, that the response to the PBGC's portion of the forms will take an average of .21 hours, and that the annual burden imposed by this information collection is 31,164 hours.

Issued at Washington, DC, this 24th day of December 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-31159 Filed 12-27-91; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30109; File No. SR-NASD-91-54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Deposit of Adjournment Fees in Arbitration Proceedings

December 20, 1991.

On November 1, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposal amends section 30(b) of the NASD's Code of Arbitration Procedure ("Code")³ to require the deposit of adjournment fees with any request for adjournment.

Notice of the proposed rule change, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29933, November 13, 1991) and by publication in the *Federal Register* (56 FR 58597, November 20, 1991). No comments were received on the proposal. This order approves the proposed rule change.

Section 30 of the Code permits the arbitrators to adjourn any arbitration hearing on their own initiative or upon the request of any party to the arbitration proceeding. Section 30 also requires the party requesting adjournment to deposit a fee with the NASD equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,000, for a subsequent adjournment request by that party. The hearing session fees are provided in sections 43 and 44 of the Code.⁴

Prior to the approval of the instant rule change, the party requesting adjournment was not required to deposit the applicable fee until the request for an adjournment was granted. The NASD has stated, however, that once an adjournment is granted, there is little or no inducement to pay the fee. Indeed,

the NASD states that in many cases, after an adjournment is granted, the requesting party does not pay the fee voluntarily and that its staff is then forced to pursue collection of the fee. The NASD believes that the amendment to section 30 of the Code will alleviate the collection burden on the NASD by requiring the adjournment fee to be paid at the time a request is made.⁵

The NASD has stated that it is aware that the rule change may impose a hardship on some arbitration parties. Therefore, the rule change will amend section 30 to permit the Director of Arbitration to waive the deposit fee upon a showing of financial hardship.

Finally, the NASD intends to apply the instant rule change to all requests for adjournment made after the date of Commission approval of the rule change. The NASD believes that because the rule change does not impose any additional or different fee on the parties to an arbitration proceeding, but merely changes the timing of the fee collection, that application of the rule change to pending actions will not impose any undue burden.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A(b)(5) and 15A(b)(6) of the Act.⁶ Pursuant to section 15A(b)(5), the NASD must "provide for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using any facility or system which the [A]ssociation operates or controls." The instant rule change will help ensure that parties to arbitration proceedings pay for the services provided by the NASD, and that such fees will be allocated equitably. Section 15A(b)(6) of the Act requires that the NASD's rules, among other things, be designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and provide for the protection of investors. The rule change approved by this order will help ensure that the NASD continues to be able to provide an effective arbitration program that promotes the goals of section 15A(b)(6). The Commission believes, for the reasons stated above, that the proposed rule change satisfies these statutory requirements.

⁵ Section 30 is also being amended to indicate that if the request for adjournment is not granted, the deposit will be refunded.

⁶ 25 U.S.C. 78o-3 (1988).

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.⁷

Jonathan G. Katz,
Secretary.

[FR Doc. 91-31061 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30113; File No. SR-NASD-91-70]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the NASD's Policy Statement on Market Closings

December 20, 1991.

Pursuant to section 19(b)(1), of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing this proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act to extend its Policy Statement on Market Closings ("Statement" or "Policy Statement"), adopted pursuant to article VII, section 3 of the NASD By-Laws, to January 31, 1992. The Policy Statement will expire on December 31, 1991. The next meeting of the NASD Board of Governors ("Board") is on January 20 and 21, 1992. The NASD is filing this proposed rule change in order to provide an opportunity for the Board to consider whether to extend the Statement to December 31, 1992. If Board approval is obtained for an extension of the Policy, the NASD will file a proposed rule change pursuant to section 19(b)(2) of the Act.

⁷ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ NASD Securities Dealers Manual, Code of Arbitration Procedure, section 30, CCH, ¶ 3730.

⁴ NASD Securities Dealers Manual, Code of Arbitration Procedure, sections 43 and 44, CCH, ¶¶ 3743 and 3746.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at this places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy Statement provides that the Board has determined that, at times when other major securities markets initiate marketwide trading halts in response to extraordinary market conditions, the NASD will upon request form the Commission, act to halt domestic trading in all securities quoted in the NASDAQ system and domestic trading in equity or equity-related securities in the over-the-counter market. In October 1988, the Commission approved proposals submitted by the American Stock Exchange ("Amex"), Boston Stock Exchange ("BSE"), Chicago Board Options Exchange ("CBOE"), Cincinnati Stock Exchange ("CSE"), Midwest Stock Exchange ("MSE"), New York Stock Exchange ("NYSE"), Philadelphia Stock Exchange ("PHLX") and Pacific Stock Exchange ("PSE") (collectively, "the Exchanges") that provided for uniform circuit breaker procedures during volatile market conditions.¹ Specifically, the circuit breaker rules provide that trading in all markets will halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points or more from its previous day's closing level and, thereafter, trading will halt for an additional two hours if the DJIA declines 400 points from its previous day's closing value.² The circuit breaker

mechanism was an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break. These circuit breaker mechanisms are still in effect today.³

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the Report of the Presidential Task Force on Market Mechanisms ("Brady Report") and the Working Group's Interim Report⁴ recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large rapid market declines.⁵ In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel circuit breakers that were approved by the Commodity Futures Trading Commission on a permanent basis.

The NASD believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, as the Policy Statement is designed to foster cooperation and coordination with the Commission and the other self-regulatory organizations engaged in regulating the U.S. securities markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

Exchanges would retain the power to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establishing closing prices.

¹ See Securities Exchange Act Release Nos. 29868 (October 28, 1991), 56 FR 56535 (Amex, BSE, MSE, NYSE, and PHLX); 26440 (January 10, 1989) 54 FR 1830 (CSE); and 26368 (December 16, 1988) 53 FR 51942 (CBOE and PSE).

² The Working Group on Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the chairmen of the Commission, Board of Governors of the Federal Reserve System and the CFTC, and the Under Secretary for Finance of the Department of the Treasury.

³ In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures after these halts, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Since the proposed rule change concerns an extension of a stated policy or practice of the NASD, it has become effective immediately upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to file No. SR-NASD-91-70 and should be submitted by January 21, 1992.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31062 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

¹ See Securities Exchange Act Release Nos. 26440 (January 10, 1989) 54 FR 1830 (CSE), 26386 (December 22, 1988) 53 (PSE); 26357 (December 14, 1988) 53 FR 51182 (BSE); 26218 (October 26, 1988) 53 FR 44137 (MSE); 26198 (October 19, 1988) 53 FR 41637 (Amex, CBOE, NASD and NYSE).

² If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of the trading day, trading will halt for the remainder of the day. If, however, the 250-point trigger is reached between one hour and one-half hours before the scheduled closing, or if the 400-point trigger is reached between two hours and one hour before the scheduled closing, the

[Release No. 34-30111; File No. SR-NASD-91-69]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Credit Against the Annual Assessment on Gross Income

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing an assessment imposed exclusively on its members under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing two rule changes to: (1) Advise that the NASD, during 1992, may amend the amount of the credit to the member provided under section 1, Schedule A to the NASD's By-Laws, such amendment to be applicable to the entire calendar year 1992; and (2) amend section 1, Schedule A to the NASD's By-Laws to change the effective period of the credit from calendar year 1991 to calendar year 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In accordance with the NASD's shift from a fiscal to a calendar budget year in 1991, the NASD has determined that member assessments should be based upon gross income reported for the calendar or fiscal year immediately preceding the NASD's calendar budget year. Because the first assessment invoices are sent to NASD members prior to the receipt of final gross income reports, the invoices will be based upon the most recent gross income reports available. After final gross income reports for 1991 are received from the members, subsequent assessment invoices will be adjusted so that the 1992 assessment is based upon 1991 gross income. The NASD may determine, however, after receipt of final gross income reports for 1991, that it is necessary to amend the amount of the credit set forth in section 1(d) of Schedule A to the By-Laws which is currently fifty percent (50%). Any amendment to the credit would be applicable to the entire calendar year 1992.

The NASD is also proposing to amend section 1(d) of Schedule A to change the effective period of the credit from calendar year 1991 to calendar year 1992.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and

subparagraph (e) of Rule 19b-4 thereunder in that it establishes or changes an assessment imposed exclusively on the NASD's members.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31063 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30114; File No. SR-NASD-91-67]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Subscription Charge for the Firm Access Query System

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association")

filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 9 of Schedule A to the NASD By-Laws relating to subscription charges for the Firm Access Query System ("FAQS"). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

Schedule A

Section 9—Subscription Charges for Firm Access Query System (FAQS)

(a) Each firm electing to subscribe to the Firm Access Query System (FAQS) will be assessed a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters ("kilocharacter") of information sent or received. The fee schedule to be paid by each firm is as follows:

(i) Monthly Data Base Access Charge—\$70.00 (waived during calendar year 1992);

(ii) Hourly Usage Charge—\$70.00 per hour and [after the first hour each month]

(iii) Kilocharacter Transmission Charge—\$0.70.

(b) Each firm which subscribes to the service will provide its own terminal and modem.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has determined that the current monthly subscription fees for the FAQS system is an impediment to attracting small and medium sized users. Further, because the NASD's Electronic Filing Program, which allows member firms to file membership related forms electronically, is only available to FAQS subscribers, the NASD has been unable to expand the use of that program.

Accordingly, the NASD is proposing to amend section 9 of Schedule A by waiving the \$70 monthly data base access charge under section 9(a)(i) during calendar year 1992 and deleting the current credit for the first hour of use each month provided under section 9(a)(ii). The NASD intends to examine the effect of the waiver of the monthly access fee near the end of 1992 and determine whether to extend or repeal the waiver, or permanently eliminate the fee. The NASD believes the proposed amendments will increase the number of FAQS users and decrease the paperwork processing demands on the NASD by increasing the use of the Electronic Filing Program through FAQS.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a fee or assessment imposed exclusively upon the NASD's members.¹

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31064 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

¹ By the terms of the rule, however, the fee changes will take effect January 1, 1992.

[Release No. 34-30111; File No. SR-NYSE-91-42]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to

Amending Rule 758(b)(ii)(A) to Broaden Limitations on Principal/Agency Trading by Competitive Options Traders, Adding Rule 758(b)(ii)(A) to the List of Exchange Rule Violations and Fines Under NYSE Rule 476A, and Amending the Minor Rule Violation Enforcement and Reporting Plan

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NYSE Rule 758(b)(ii)(A) that would broaden the limitations on principal/agency trading by Competitive Options Traders ("COTs") by changing the current limitations, which are series-specific, to encompass all options on the same underlying security or, in the case of an index option, on the same underlying stock group. In this regard, the proposed rule change also contains an NYSE Information Memo to options traders describing the restrictions on principal/agency trading by COTs.¹ In addition, the rule change proposes to add Rule 758(b)(ii)(A), as amended, to the ("Rule 476A List"), rule embodying the Exchange's Minor rule violation plan. The proposed rule change also requests approval to amend the NYSE's Rule 19d-1 minor rule violation enforcement and reporting plan ("minor rule plan") to

include the aforementioned Exchange rule.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to broaden the limitations on principal/agency trading by COTs. Currently, NYSE Rule 758(b)(ii)(A) provides that a member, while acting as a COT, may not effect an options transaction on the floor of the Exchange as principal during the same trading session as he or she executes an off-floor order in an option of the same series. The proposed rule change would broaden this limitation to apply to any option on the same underlying security or, in the case of an index option, on the same underlying stock group, during the same trading session.

The proposed change would bring the Exchange's rule in line with similar rules of other options exchanges, thereby equalizing the regulation of principal/agency trading activity in options by non-specialist floor traders.³

The Exchange also proposes to amend NYSE Rule 476A to incorporate violations of the proposed COT principal/agency trading restrictions. NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules in lieu

of commencing a disciplinary proceeding.⁴

The purpose of the expedited sanction procedures contained in Rule 476A are to provide for a quick and timely response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Accordingly, Rule 476A provides for an appropriate response to minor violations of certain Exchange rules, while preserving the due process rights of the party accused through specified, required procedures. The Rule 476A List delineates both the rule violations that may be the subject of fines under the rule as well as the schedule of fines.

In filing SR-NYSE-84-27, which initially set forth the provisions and procedures of NYSE Rule 476A, the Exchange indicated that it would amend the Rule 476A List from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with the rule was gained.⁵ Since the initial implementation of Rule 476A, the Exchange's regulatory divisions have amended the Rule 476A List to include either existing rules or newly approved ones which are appropriate for inclusion in this particular disciplinary process when violations occur.⁶

The Exchange is presently seeking approval to add NYSE Rule 758(b)(ii)(A) to the list of rules subject to possible imposition of fines pursuant to the NYSE Rule 476A procedures. The purpose for the proposed change to NYSE Rule 476A is to facilitate the Exchange's ability to induce compliance with Rule 758(b)(ii)(A). The Exchange believes failure to comply with the requirements of this rule should be addressed with an

to the rule filing as Exhibit C. A copy of the list is available at the NYSE and the Commission.

¹ See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (approving File No. SR-NYSE-84-27).

² See Securities Exchange Act Releases No. 22490 (October 2, 1985), 50 FR 41684 (order granting accelerated approval to File No. SR-NYSE-85-30); No. 23104 (April 11, 1986), 51 FR 13307 (approving File No. SR-NYSE-86-12); No. 24985 (October 5, 1987), 52 FR 41643 (approving File No. SR-NYSE-86-21); No. 25763 (May 27, 1988), 53 FR 20925 (approving File No. SR-NYSE-87-10); No. 27702 (February 12, 1990), 55 FR 6139 (approving pilot of 5 rules until October 5, 1990, File No. SR-NYSE-90-04); No. 27878 (April 4, 1990), 55 FR 13345 (approving File No. SR-NYSE-89-44); No. 28003 (May 8, 1990), 55 FR 20004 (approving File No. SR-NYSE-90-09); No. 28505 (October 2, 1990), 55 FR 41288 (permanently approving File No. SR-NYSE-90-04); No. 28995 (March 21, 1991), 56 FR 12967 (approving File No. SR-NYSE-91-04); and No. 29855 (November 25, 1991), 56 FR 59311 (November 25, 1991) (notice of File No. SR-NYSE-91-38).

¹ The text of the NYSE Market Surveillance Information Memo was attached to the rule filing as Exhibit B and is available at the Commission and the NYSE.

² See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated November 29, 1991. The Commission approved the minor rule plan, embodied in NYSE Rule 476A, in Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38800, relieving the NYSE of the current

³ A list of the NYSE rules subject to Exchange Rule 476A procedures and the corresponding fine schedule, as amended by this filing, were attached reporting requirements imposed under section 19(d)(1) of the Act. The Commission notes that Rule 476A fines in excess of \$2,500 are not considered assessed pursuant to the minor rule plan and, accordingly, must be reported under section 19(d)(1).

⁴ See e.g., American Stock Exchange ("Amex") Rules 950(c) and 111(c) and the Amex Floor Transactions Handbook, part VI, section 6(d) at 105; and Chicago Board Options Exchange ("CBOE") Rule 8.8.

appropriate sanction and seeks Commission approval to add violations of this rule's requirements to the NYSE Rule 476A List. Violations of this rule that are deemed by the Exchange not to be minor in nature are also subject to formal disciplinary proceedings under Exchange Rule 476.

Finally, consistent with the inclusion of Rule 758(b)(ii)(A) in Rule 476A, the NYSE proposes to amend the NYSE's Rule 19d-1 minor rule violation enforcement and reporting plan ("minor rule plan") to include the aforementioned Exchange rule.⁷

2. Statutory Basis

The statutory basis under the Act for the proposed rule change amending Rule 758(b)(ii)(A) is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change amending the Rule 476A List will advance the objectives of section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated November 29, 1991. The Commission approved the minor rule plan, embodied in NYSE Rule 476A, in Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600, relieving the NYSE of the current reporting requirements imposed under section 19(d)(1) of the Act. The Commission notes that Rule 476A fines in excess of \$2,500 are not considered assessed pursuant to the minor rule plan and, accordingly, must be reported under section 19(d)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-42 and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31065 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30110; File No. SR-OCC-91-19]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval on an Accelerated Basis of a Proposed Rule Change Revising Sequences in the Pledge Program

December 20, 1991.

On November 22, 1991, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR-OCC-91-19) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the Proposal appeared in the Federal Register on December 12, 1991, to solicit comment from interested persons.² No comments were received by the Commission. This order approves the proposal on an accelerated basis.

I. Description of the Proposal

The purpose of the proposed rule change is to modify the processing sequence for exercises or sales of options or index participations ("IPs")³ that have been pledged pursuant to OCC Rule 614. OCC designed and implemented its pledge program to enable market-makers, specialists, and their clearing members to use their long positions in options and, IPs in more limited instances, to secure a greater number of collateralized loans on more favorable financing terms.⁴

In 1984, OCC's pledge program was enhanced to permit clearing members to utilize multiple pledgees.⁵ That enhancement included a processing sequence for exercises or sales of pledged positions of the same options series (or IPs class) among multiple pledgees.⁶ Currently, those processing

¹ 15 U.S.C. 78s(b) (1988).

² Securities Exchange Act Release No. 38038 (December 5, 1991), 56 FR 64522.

³ Pending approval by the Commission of File No. SR-OCC-91-05 (OCC's proposed rule change that would allow OCC to issue, guarantee, clear, and settle IPs, notice of which was published in Securities Exchange Act Release No. 29081 (April 12, 1991), 56 FR 16142). IPs may not be pledged to OCC under the pledge program.

⁴ For a comprehensive description of the framework of the pledge program, see Securities Exchange Act Release No. 13856 (July 19, 1983), 48 FR 33955 (order approving OCC's pledge program) [File No. SE-OCC-82-25].

⁵ Securities Exchange Act Release No. 20894 (May 25, 1984), 49 FR 23132 (notice of filing and immediate effectiveness of expansion of OCC's pledge program) [File No. SR-OCC-84-06].

⁶ OCC Rule 614(f) sets forth the procedures governing the exercises or sales of pledged options.

procedures provide that exercises or sales of pledged positions, after being applied to positions in the primary account, must be allocated among pledge accounts in descending order.⁷ Thus, after allocation to the primary account, exercises or sales are allocated first to the pledge account with the highest numerical designation and last to the pledge account with the first numerical designation.

Pledges, however, have advised OCC that the language of OCC Rule 614 from time to time has resulted in confusion as to their priority status with respect to pledged positions, and they have requested OCC to clarify the Rule's processing sequence. Accordingly, OCC has determined to accede to their request. Thus, the language of OCC Rule 614 describing the processing sequence is being modified to provide that after being applied to the primary account, exercises or sales of pledged positions will be allocated first to the pledge account designated as the first pledge account, second to the pledge account designated as the second pledge account, and so forth. OCC believes that this description of the processing sequence is clearer and is more consistent with pledges' expectations of their priority status as described in the second paragraph of OCC Rule 614(a).

OCC also is proposing, where appropriate, to call an "option" or "IP" a cleared security, or in the plural "cleared securities," to conform Rule 614 to certain proposed revisions to the Pledge Agreement executed by OCC, the pledgor, and the pledgee. The proposed revisions are contained in File No. SR-OCC-90-11, as amended.⁸

II. Discussion

The Commission believes that the proposed rule change is consistent with the Act and particularly with section 17A of the Act.⁹ Section 17A(a)(1) of the Act¹⁰ encourages the adoption of efficient and effective procedures for the clearance and settlement of securities transactions. Section 17A(b)(3)(F) of the Act¹¹ provides that the rule of the clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds

which are in its custody or control or for which it is responsible.

This rule change will promote the prompt and accurate clearance and settlement of securities transactions by enhancing a pledge program that better enables participants in the options market to obtain collateralized loans to support their options trading activities. The Commission believes that the proposal will clarify for pledges the pledge program's processing sequence thereby eliminating certain points of confusion and improving the efficiency of the program.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to thirty days after the date of publication of the notice of filing in the *Federal Register*. The Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register* because of the Commission's belief that it is desirable for the proposed processing sequence to be approved prior to or at the same time of implementation of programming changes to OCC processing systems. It is the Commission's understanding that the computer logic that is used to incorporate this proposal's modifications of the OCC's pledge program into OCC's computer system also forms basis for other changes and is part of a larger program that OCC expects to implement in the near future.

III. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register*.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² That the above mentioned proposed rule change (SR-OCC-91-19) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.¹³

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31066 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30112; File No. SR-PSE-91-42]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Options Fees Imposed by the PSE

December 20, 1991.

Pursuant to sections 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend certain charges for options operations. A copy of the text of the text of the amended charges is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed increases are intended to cover the increased costs of supporting the market making operations and other specific services on the PSE options trading floor.

The proposed rule change is consistent with section 6(d)(4) of the Act in that it provides for an equitable allocation of reasonable dues, fees, and other charges among the PSE members using the facilities of the PSE. In addition, the proposed rule filing is

⁷ OCC Rule 614(f)(1) (i) and (ii).

⁸ Securities Exchange Act Release No. 28876 (December 4, 1990), 55 FR 51365 (notice of filing of proposed rule change relating to OCC account structure) [File No. SE-OCC-90-11].

⁹ 15 U.S.C. 78q-1 (1988).

¹⁰ 15 U.S.C. 78q-1(a)(1) (1988).

¹¹ 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 C.F.R. 200.30-3(a)(12).

consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The options fees changes were proposed by the Options Revenue Committee, which is composed of five options members, three of whom are Governors of the PSE. The Options Revenue Committee was established in July 1991, and met every two weeks to review and discuss fee changes. In addition, a Board Committee composed of four Board members—one options member, one equities member, one options/equities member and one public member—was established to discuss the fees.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19(b)(4) thereunder. At any time within 60 days of the date of filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PSE-91-42 and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

EXHIBIT A

[Italicized text denotes amendments; bracketed text denotes deletions.]

PSE Options: Transactions Charges	
Transaction Charges:	
Market Maker.....	[\$0.075] <i>\$0.085</i> per contract side on transactions in equity options.
Firm.....	[\$0.075] <i>\$0.085</i> per contract side where the premium is less than \$1 per contract.
	[\$0.10] <i>\$0.115</i> per contract side where the premium is \$1 or more per contract.
Data Entry.....	[\$0.02 per contract] <i>\$0.25</i> per trade.
On-Line Trade Comparison.....	[\$0.30] <i>\$0.025</i> per trade plus [\$0.005] <i>\$0.025</i> per contract for all trades.
Monthly Reports.....	[\$50] <i>\$55</i> per month per symbol, plus [\$0.005] per contract, to a maximum of [\$500] <i>\$550</i> per month.
User Extracts (Batch).....	[\$0.005] <i>\$0.0075</i> per trade, plus development and production costs.
PSE Options: Poets' Charges	
Market and Marketable Limit Orders	
Market Maker transaction fees	
Auto Execution.....	[\$0.05] <i>\$0.075</i> per contract side.
Semi-auto Execution.....	[\$0.10] <i>\$0.125</i> per contract side.
Charge to firms for floor on semi-auto execution.....	[\$0.10] <i>\$0.125</i> per contract side.
PSE Options: Floor and Market Maker Charges	
Market Maker.....	[\$600] <i>\$680</i> per month per market maker.
Agency Stock Execution Fee.....	[\$1.00] <i>\$1.100</i> per month per firm.
Market Maker Give-Up Charge.....	[\$0.075] <i>\$0.10</i> per contract.
Booths (monthly per booth).....	[\$250] <i>\$275</i> for retail booths.
	[\$300] <i>\$350</i> for clearing booths.
	[\$400] <i>\$450</i> for stock execution booths.
	[\$250] <i>\$300</i> surcharge for prime location.
Quotron Rental.....	[\$425] <i>\$475</i> per month per Q1000 terminal.
General Access Phones.....	[\$100] <i>\$110</i> per month per participating firm.
Drop Phone Charge.....	[\$100] <i>\$110</i> per month per drop phone.
Badges.....	[\$25] <i>\$30</i> initial issuance fee.
	[\$25] <i>\$30</i> per month for booth clerks.
	[\$50] <i>\$60</i> per month for stock firm clerks, hard badge managers, and all other floor personnel.
	[\$70] <i>\$80</i> per month per terminal.
Trade Match Terminal Fee.....	[\$98] <i>\$120</i> per month for 6' table.
Trade Match Table Fee.....	[\$65] <i>\$80</i> per month for 4' table.
	[\$49] <i>\$60</i> per month for shared 6' table.
POETS Workstation Fee.....	[\$350] <i>\$400</i> per month.
Printer Fee ²	[\$65] <i>\$75</i> per month.

¹ Pacific Options Exchange Trading System.

² Operational service.

[FR Doc. 91-31067 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 23, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Tenneco, Inc.

Depository Shares (each representing 1/2 of a share of Series A Cumulative Preferred Stock "PERCS") (File No. 7-7745)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-31138 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30110; File No. SR-Phlx-91-44]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Amendments to its Arbitration Rule 950, Section 3, Composition and Appointment of Panels

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby

given that on December 4, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Phlx Rule 950, Section 3, Composition and Appointment of Panels. The text of the proposed rule change is available for inspection and copying at the Commission and at the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to alleviate difficulties presently experienced in the administration of the Member Arbitration Program.¹ Currently, panels consist of either five or seven appointees, depending on the amount of money in dispute. No provisions exist for Panel absenteeism. On several occasions, panel members who agreed to serve failed to attend a hearing or canceled an appearance with little advance notice. Under the current rule, an arbitration matter cannot proceed unless the entire panel is present.

The administration and resolution of the filed disputes would be aided considerably by the implementation of the proposed amendment to Rule 950, section 3. By allowing no more than two arbitration panel members to be absent

from a proceeding, a member arbitration can proceed according to schedule. A new supplementary material provision to section 3 will require the Exchange staff to use its best efforts to effect a full panel's attendance at any hearing. For example, the Exchange will not schedule any hearing unless each day and every arbitration panel member, at least initially, agrees to attend the hearing on that assigned date and time. The proposed amendment enables the arbitration program to be operated pursuant to its original intent, i.e., providing a fair, equitable and speedy resolution for all claims submitted. Absent the amendment, the program will be subject to perpetual delays in hearings with concomitant backlogs increasing in its docket.

This proposed amendment is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest pursuant to section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

¹ Member arbitrations do not involve a public customer.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-44 and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31136 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 23, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities.

Vitro Sociedad Anonima
American Depositary Share (File No. 7-7719)
Old Republic International Corporation
Cumulative Preferred Stock (File No. 7-7720)
Morgan Stanley Group, Inc.
Depositary Shares (File No. 7-7721)
Banco Bilbo Vizcaya International Gibraltar Limited
American Depositary Shares (File No. 7-7722)
Employee Benefit, Inc.
Common Stock, \$.01 Par Value (File No. 7-7723)
Fisher Scientific International
Common Stock, \$.01 Par Value (File No. 7-7724)
ShopKo Stores, Inc.
Common Stock, \$.01 Par Value (File No. 7-7725)
Bombay Company
Common Stock, \$.01 Par Value (File No. 7-7726)
Hanson Plc
Class C Warrants (File No. 7-7727)
First Interstate Bancorp.

Depositary Shares Pfd. Stock (File No. 7-7728)
British Telecommunications Plc
American Depositary Shares Preferred (File No. 7-7729)
Tenneco, Inc.
Depositary Shares Cum. Pfd. Stock "Perks" (File No. 7-7730)
Healthtrust, Inc. The Hospital Company
Common Stock, \$.001 Par Value (File No. 7-7731)
Oceaneering International, Inc.
Common Stock, \$.25 Par Value (File No. 7-7732)
Partners Preferred Yield III, Inc.
Common Stock, \$.01 Par Value (File No. 7-7733)
Partners Preferred Yield II, Inc.
Common Stock, \$.01 Par Value (File No. 7-7734)
Struthers Industries, Inc.
Common Stock, \$.10 Par Value (File No. 7-7735)
Professional Bancorp, Inc.
Common Stock, \$.08 Par Value (File No. 7-7736)
Helionetics, Inc.
Common Stock, No Par Value (File No. 7-7737)
Intellicall, Inc.
Common Stock, \$.01 Par Value (File No. 7-7738)
Duty Free International, Inc.
Common Stock, \$.01 Par Value (File No. 7-7739)
Delta Woodside Industries, Inc.
Common Stock, \$.01 Par Value (File No. 7-7740)
US West, Inc.
Common Stock, No Par Value (File No. 7-7741)
North Fork Bancorporation
Common Stock, \$.25 Par Value (File No. 7-7742)
Nationwide Health Properties, Inc.
Common Stock, \$.10 Par Value (File No. 7-7743)
Northeast Federal Corporation
Common Stock, \$.01 Par Value (File No. 7-7744)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31137 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

Performance Review Board; Membership

AGENCY: Securities and Exchange Commission.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Securities and Exchange Commission announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT:

Susan Baumann, U.S. Securities and Exchange Commission, Washington, DC 20549 (202) 272-2700.

The following are the names and present titles of the individuals appointed to the Performance Review Board established by the U.S. Securities and Exchange Commission.

Name and Title

James Doty, General Counsel
Barbara Green, Executive Assistant & Senior Advisor
James McConnell, Executive Director

Dated: December 23, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31068 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18454; 812-7712]

Oppenheimer Fund, et al.; Notice of Application

December 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Oppenheimer Fund, Oppenheimer Global Fund, Oppenheimer Time Fund, Oppenheimer Special Fund, Oppenheimer Tax-Free Bond Fund, Oppenheimer New York Tax-Exempt Fund, Oppenheimer Target Fund, Oppenheimer U.S. Government Trust, Oppenheimer Gold & Special Minerals Fund, Oppenheimer High Yield Fund, Oppenheimer Asset Allocation Fund, Oppenheimer Equity Income

Fund, Oppenheimer Global Bio-Tech Fund, Oppenheimer Discovery Fund, Oppenheimer GNMA Fund, Oppenheimer Integrity Funds (a series fund having two series, Oppenheimer Value Stock Fund and Oppenheimer Investment Grade Bond Fund), Oppenheimer Blue Chip Fund, Oppenheimer Strategic Income Fund, Oppenheimer Champion High Yield Fund, Oppenheimer California Tax-Exempt Fund, Oppenheimer Pennsylvania Tax-Exempt Fund, Oppenheimer Global Environment Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Total Return Fund, Inc., and Oppenheimer Strategic Investment Grade Bond Fund (the "Funds") and any other open-end investment company which is or may become a member of the Oppenheimer "group of investment companies" as that phrase is defined by paragraph (a)(5) of rule 11a-3 under the Act, and having the same type of front-end sales charge for which the imposition of the contingent deferred sales charge arrangement proposed herein would be appropriate (such other investment companies shall hereinafter collectively be included in the reference to the "Funds"); Oppenheimer Management Corporation ("OMC"), and Oppenheimer Fund Management, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order of exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit each of the Funds to assess a contingent deferred sales charge ("CDSC") on redemptions of shares of the Funds purchased without the imposition of a sales charge in the amount of one million dollars or more, and to waive the CDSC under certain circumstances.

FILING DATES: The application was filed on April 18, 1991 and amended on September 11, December 12, and December 20, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 14, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Robert G. Galli, Esq., Oppenheimer Management Corporation, 2 World Trade Center, 34th Floor, New York, New York 10048-0203.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies organized as Massachusetts business trusts or Maryland corporations and registered under the Act. OMC provides investment advisory and management services to the Funds. The Distributor, a wholly owned subsidiary of OMC, serves as the principal underwriter for the Funds.

2. The Funds currently offer their shares for sale at net asset value plus a front-end sales charge on aggregate purchases totaling less than \$1 million. Applicants impose no front-end sales charge on aggregate purchase transactions totalling \$1 million or more.

3. Under the proposed CDSC arrangement, if shares of a Fund purchased in aggregate amounts of \$1 million or more (other than pursuant to transactions described in a respective Fund's prospectus permitting classes of sales transactions without imposition of any sales charges) are redeemed within 18 months after the end of the calendar month in which the purchase order was accepted, a CDSC will be imposed. The CDSC will be equal to 1% of the lesser of (a) the aggregate net asset value of the shares at the time of purchase, or (b) the aggregate net asset value of the shares at the time of redemption. The CDSC will be deducted from the redemption proceeds otherwise payable to the shareholder and will be retained by the Distributor.

4. No CDSC will be imposed upon the redemption of shares purchased through the reinvestment of dividends or capital gain distributions. Nor will a CDSC be imposed upon shares or amounts representing increases in the value of an account resulting from capital appreciation. In determining whether a CDSC is payable, it will be assumed that

shares that are not subject to a CDSC are redeemed first and other shares are redeemed in the order purchased. This practice is consistent with Applicants' undertaking to comply with proposed rule 6c-10 under the Act. Furthermore, no CDSC will be assessed on shares acquired by exchange where a CDSC would not have been assessed upon the exchanged shares upon redemption (except for shares exchanged from money market funds purchased at net asset value without a sales charge). A CDSC will be imposed, however, on shares of a Fund acquired by exchange of shares subject to a CDSC if such acquired shares are redeemed within 18 months of the end of the calendar month in which such exchanged shares were purchased. With respect to exchanges, Applicants will comply with rule 11a-3.

5. Shareholders who are assessed a CDSC in connection with the redemption of shares of any Fund followed by a reinvestment of some or all of such amount in the shares of any Fund within six months after such redemption (or such other time period as the Funds may establish from time to time) may do so at net asset value if such entitlement is claimed at the time of reinvestment. In the event the reinvestment period changes after a shareholder redeems out of a Fund, the shareholder will be allowed to reinvest within the reinvestment period in effect at the time of redemption.

6. The CDSC will not be assessed on shares purchased prior to the date the Commission issues an order on the application.

7. Under the proposed CDSC arrangement, the CDSC will be waived in the following instances: (a) Redemptions in connection with retirement distributions to participants or beneficiaries of, or loans to participants or beneficiaries from, plans qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (the "IRC"), custodial accounts under section 403(b)(7) of the IRC, Individual Retirement Accounts under section 408(a) of the IRC, deferred compensation plans created under section 457 of the IRC, and other employee benefit plans, and returns of excess contributions made to such plans; (b) redemptions pursuant to a Fund's automatic withdrawal plan but limited to no more than 12% of the original account amount annually; and (c) redemptions effected pursuant to a Fund's right to involuntarily redeem a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size set forth in the Fund's

Declaration of Trust or Articles of Incorporation or as adopted by the Fund's Board of Directors or Trustees, as applicable, pursuant thereto, or involuntary redemptions by operation of law.

Applicants' Legal Conclusions

1. Applicants request an order pursuant to section 6(c) of the Act exempting the Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c-1 thereunder to the extent necessary to permit Applicants to implement the proposed CDSC arrangement.

2. Applicants believe that the imposition of the CDSC arrangement is fair, consistent with the policy and provisions of the Act, in the best interests of investors, and meets the exemptive standards of section 6(c) of the Act. The proposed CDSC arrangement would allow shareholders the advantage of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge. Furthermore, the waiver of the CDSC, as described above, is in the interest of investors and consistent with the policies and provisions of the Act.

Applicants' Condition

If the requested order is granted, Applicants agree to comply with proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be repropounded, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31069 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25436]

Filings; Les Developpements Hydroelectriques CHI Inc.

December 20, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 13, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Les Developpements Hydroelectriques CHI, Inc.

Consolidated Hydro, Inc. 31(31-659)

Les Developpements Hydroelectriques CHI Inc. ("LDH") and Consolidated Hydro, Inc. ("Consolidated") (together, "Applicants"). One Greenwich Plaza, Greenwich, Connecticut 06830, have filed a post-effective amendment to an application for an order granting the Applicants an exemption under section 3(a)(5) from all provisions of the Act, except section 9(a)(2).

By order dated October 16, 1991 (HCAR No. 25393) (the "October Order"), the Commission granted Applicants an order of exemption under section 3(a)(5) under the circumstances described below. Subsequently, Applicants were unable to consummate the transactions described in the October Order within the sixty-day time period required under rule 24(c)(1). Therefore, Applicants now request that the time period to carry out the transactions be extended through December 31, 1992.

Consolidated is a privately held Delaware corporation whose principal place of business is Greenwich, Connecticut. Consolidated states that it is engaged in the business of developing, operating and owning hydroelectric projects throughout the United States. Presently, Consolidated, or one of its subsidiaries, holds ownership interests in sixty-one operating hydroelectric facilities located in twelve different states. Pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, each such operating hydroelectric facility is a qualified energy facility and is therefore deemed not to be an "electric utility company" under section 2(a)(3) of the Act. At this time

Consolidated is not a "public-utility company" within the meaning of the Act and derives no income whatsoever, directly or indirectly, from any one or more subsidiary companies which are "public-utility companies" within the meaning of the Act within the United States or elsewhere.

LDH, a wholly-owned subsidiary of Consolidated, is a Delaware corporation whose principal place of business is Montreal, Quebec, Canada. LDH is not presently a "public-utility company" within the meaning of the Act.

LDH seeks to acquire a 50% interest in a hydroelectric project in Montreal, Quebec, Canada (the "Project") owned by a nonaffiliated Canadian corporation, Developpements Hydromega, Inc. ("DHI"). LDH intends to establish a new corporation under the laws of Quebec ("NEWCO") to which DHI will transfer all assets and liabilities relating to the Project. LDH will acquire 50% of the issued and outstanding stock of NEWCO, and DHI will own the remaining fifty percent of the NEWCO stock.

NEWCO will be a "public utility company" under section 2(a)(5) of the Act, and both Consolidated and LDH will be holding companies as defined by section 2(a)(7)(A) of the Act and, as such, subject to regulation under the Act unless an exemption is obtained.

Consolidated and LDH assert that they qualify for an exemption under section 3(a)(5) of the Act. Neither is a company the principal business of which within the United States is that of a public-utility company, and neither derives (or will derive) any material part of its income, directly or indirectly, from any one or more subsidiary companies the principal business of which within the United States is that of a public utility.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31070 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-10-M

[Release No. 35-25435]

Filings; Central and South West Corp., et al.

December 20, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commissions Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 13, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corp. (70-7895)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(c) of the Act and Rules 46 and 50(a)(5) thereunder.

CSW purposes to double the number of its shares of common stock outstanding through a two-for-one stock split-up (the "Stock Split"). The Stock Split will be accomplished by way of a stock dividend of one share of common stock for each share outstanding on the record date for such distribution. At September 30, 1991, CSW had: (i) 350,000,000 authorized shares of common stock, par value \$3.50 per share, (ii) 94,133,936 shares issued and outstanding, and (iii) no shares in its treasury.

In connection with the proposed transaction, CSW proposes to transfer the sum of \$3.50 for each additional share to be issued or to be held in CSW's treasury from its paid-in capital account (which, at September 30, 1991, was \$884,705,804) to its common stock account (which, at September 30, 1991, was \$329,468,777), so that the par value for each share outstanding or held in CSW's treasury after the Stock Split and distribution will continue to be \$3.50.

Included in the number of shares outstanding are 26,366 shares of a total 1,500,000 shares initially authorized for CSW's Stock Option Plan, 175,277 of the

500,000 shares initially authorized for CSW's Restricted Stock Plan and 2,260,062 of the 4,000,000 shares initially reserved for CSW's Employees' Thrift Plan. After the proposed Stock Split, the total number of remaining shares authorized and available for insurance under the Stock Option Plan, the Restricted Stock Plan and the Employees' Thrift Plan will be 2,947,268, 649,446 and 3,449,876 shares, respectively.

CSW has requested that the proposed issuance of additional shares of common stock be excepted from the competitive bidding requirements of Rule 50 under subsection (a)(5).

CSW asserts that the proposed Stock Split and distribution of the additional shares and the consequent reduction in the market place per share will attract wider ownership and thus broaden the market for CSW's common stock, and that the improved and expanded market will be in the best interests of CSW and its stockholders.

Savannah Electric and Power Co. (70-7917)

Savannah Electric and Power Company ("Savannah"), 600 Bay Street, East, Savannah, Georgia 31401, an electric utility subsidiary of the Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 6(b), 7, 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

Savannah proposes to finance and/or refinance the cost of certain pollution control facilities and sewage and solid waste disposal facilities at one or more of Savannah's electric generating plants or other facilities located in Chatham and Effingham Counties in the State of Georgia from time-to-time not later than December 31, 1995. It is proposed that the Development Authority or other appropriate entity of each county ("Authority") will issue its revenue bonds ("Revenue Bonds") for the purpose of making loans to Savannah to finance or refinance the costs of the acquisition, construction, installation and equipping of the facilities at the plant or other facility located in its county ("Project"). The aggregate principal amount of Revenue Bonds to be issued from time-to-time by the Authorities pursuant to authority granted hereunder will not exceed \$25 million.

While the actual amount of Revenue Bonds to be issued by each Authority has not yet been determined, such amount will be based upon the cost of refunding outstanding bonds or the cost of the Project located in its county. Present estimates indicate that

approximately \$6 million of the \$25 million principal amount of Revenue Bonds will be for new financing of Projects, with the remainder to be available for refunding.

Savannah will not use the proceeds of the sale of the Revenue Bonds to refund outstanding pollution control bonds unless the estimated present value savings derived from the net difference between interest payments on any Revenue Bonds to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. Such discount rate is based on the estimated after-tax interest rate on the Revenue Bonds issued for refunding purposes.

Revenue Bonds will be sold by each Authority pursuant to arrangements with one or more purchasers or underwriters. The interest rate on the Revenue Bonds will be determined by the Board of Directors of the Authority and will be either a (1) Fixed rate, that may be convertible to a rate which will fluctuate in accordance with a specified prime or base rate(s) or may be determined pursuant to certain remarketing or auction procedures; or a (2) fluctuating rate, that may be convertible to a fixed rate.

Savannah will enter into a Loan Agreement with the Authority relating to each issue of the Revenue Bonds ("Agreement"). Under the Agreement, the Authority will loan to Savannah the proceeds of the sale of the Authority's Revenue Bonds, to be evidenced by the issuance of a non-negotiable promissory note by Savannah ("Note"). The proceeds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee ("Trust Indenture"), under which the Revenue Bonds are to be issued and secured, and will be applied by Savannah to the payment of the Cost of Construction, as defined in the Agreement, of the Project or to refund outstanding pollution control revenue obligations.

The Note will provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest on the Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. The Agreement will provide for the assignment to the Trustee of the Authority's interest in, and of the moneys receivable by the Authority

under, the Agreement and the Note. The Agreement will also obligate Savannah to pay the fees and charges of the Trustee and will provide that Savannah may at any time, so long as it is not in default, prepay the amount due under the Note, including interest, in whole or in part, in amounts sufficient to redeem or purchase the outstanding Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture will provide that the Revenue Bonds will be redeemable at any time on or after a specified date from the date of issuance: (1) In whole or in part, at the option of Savannah, and may require the payment of a premium at a specified percentage of the principal amount; and (2) in whole, at the option of Savannah and without the payment of a premium under certain extraordinary circumstances. The Revenue Bonds will mature from one to 40 years from the first day of the month in which they are initially issued and may, in the case of a maturity of 15 to 40 years, be entitled to the benefit of a mandatory redemption sinking fund.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Savannah to purchase the Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Savannah may also be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, or Savannah may be required to indemnify the bondholders against any other increases in interest, penalties or taxes.

Savannah may determine to secure its obligations under the Note by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") in principal amounts either equal to (1) The principal amount of the Revenue Bonds or (2) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period. Collateral Bonds will mature on the maturity date of the Revenue Bonds and will be non-transferable by the Trustee. The Collateral Bonds, in the case of clause (1) above, would bear interest at a rate or rates equal to the interest rate or rates to be borne by the related Revenue Bonds and, in the case of clause (2)

above, would be non-interest bearing. The obligation of Savannah to make payments with respect to the Collateral Bonds will be satisfied to the extent that payment are made under the Note sufficient to meet payments when due in respect of the related Revenue Bonds. Upon acceleration by the Trustee of the principal amount of all related outstanding Revenue Bonds, the Trustee may demand the mandatory redemption of the related Collateral Bonds at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption. Upon the optional redemption of the Revenue Bonds, in whole or in part, at any time after they have been outstanding for a specified period, it may be provided that a related principal amount of the Collateral Bonds will be redeemed at the redemption price of the Revenue Bonds.

As an alternative to or in conjunction with the issuance of the Collateral Bonds, Savannah may cause an irrevocable Letter of Credit ("LOC") of a bank ("Bank") to be delivered to the Trustee. The LOC would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary to pay principal of an accrued interest on the Revenue Bonds when due. Pursuant to a separate agreement with the Bank, Savannah would agree to pay to the Bank on demand all amounts that are drawn under the LOC, as well as certain fees and expenses. As a further alternative to, or in conjunction with, securing its obligations under the Agreement and Note, Savannah may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such series of the Revenue Bonds. The insurance policy would extend for the term of the related Revenue Bonds, would be non-cancelable by the insurance company for any reason, and may provide for escrow payments by Savannah to indemnify the insurer. In the event that a LOC is delivered or an insurance policy is issued as alternatives to the issuance of the Collateral Bonds, or if none of the three security alternatives are exercised, Savannah may also convey to the Authority a subordinated security interest in the Project or other property of Savannah as further security for Savannah's obligations under the Agreement and the Note. Such subordinated security interest would be assigned by the Authority to the Trustee.

Savannah also proposes to enter into arrangements providing for the delayed

or future delivery of Revenue Bonds to one or more purchasers or underwriters. The obligations of the purchasers or underwriters to purchase Revenue Bonds under any such arrangements may be secured by U.S. Treasury securities, letter or credit or other collateral.

For the Commission, by the Divisions of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-312071 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 38418, et al.]

Employee Protection Program Investigations: Airlift International, et al.; Issued by the Department of Transportation on the 23rd Day of December, 1991

Employee protection program investigations: Airlift International, American Airlines, Continental Air Lines, Frontier Airlines, Pan American World Airways, Republic Airlines, Transamerica Airlines, Trans World Airlines, United Air Lines, and Western Airlines; Docket 38418, 38570, 38720, 45234, 38883, 41072, 44397, 38184, 38571, and 41061.

On November 15, 1991, the Department issued Order 91-11-16, its Preliminary Order of Investigation in the above-captioned proceedings. A summary of this order was subsequently published in the *Federal Register* (56 FR 58956 (November 22, 1991)). In it, we set forth our preliminary views on how to process these cases, reviewed the relevant issues, and called for information from various carriers and amended answers, comments, and response from interested persons. The carriers' information submissions and all answers and comments are due December 23, 1991, and responses to any answers and comments are due January 2, 1992.

On December 16, 1991, Continental Airlines and Frontier Airlines filed a request for 30 days' additional time to respond to Order 91-11-16. In support of their request, they cite Continental's current bankruptcy, Frontier's past reorganization, a change in their personnel dealings with Employee Protection Provision matters, and a delay in the receipt of the order by their counsel. Continental and Frontier claim

they need more time to search for the employment figure we directed them to file for People Express and New York Air. They also ask for 30 days' additional time to file comments and positions on substantive and procedural matters discussed in the order, claiming that they need that time to review both their own cases to date and the lead cases treated by Order 91-9-20.

We will grant Continental¹ and Airlift International, the other carrier required to file employment figures, an additional 30 days to file this information, but we will not grant extra time to file comments and positions in response to Order 91-11-16. Delaying our receipt of employment figures need not prolong the course of these proceedings. Even without this information, we need not delay issuance of our next order, which will establish further procedures, set forth a list of information and data to be obtained and made available to the parties, and direct those holding the information to provide it. Also, Continental and Frontier have given cogent reasons for needing extra time to assemble their employment data.

In contrast, delaying our receipt of carriers' and other interested persons' answers, positions, and comments would delay the issuance of our next order unduly. We see a strong public interest in processing these cases as expeditiously as possible. That being the case, and in view of the paucity of the records to date, the exhaustive discussion of the lead cases in Order 91-9-20, and the preliminary nature of the filings for which we have called, Continental and Frontier have not justified their request for additional time for these filings. We therefore deny it.

We will publish this notice in the *Federal Register* and serve a copy on all parties on the service lists of the above-referenced dockets.

Dated: December 23, 1991.

Jeffrey N. Shane,
Assistant Secretary for Policy and
International Affairs.

[FR Doc. 91-31079 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended December 20, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47921.

¹ Order 91-11-6 did not require any additional information of frontier.

Date filed: December 18, 1991.

Parties: Members of the International Air Transport Association.

Subject: Amendment To IATA Articles of Association (Article VIII).

Proposed Effective Date: Upon All Necessary Government Approvals.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-31140 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 20, 1991

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47925.

Date filed: December 19, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 1992.

Description: Joint Application of Delta Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations for approval of the transfer to Delta of Pan American's authority to serve the New York, N.Y./Newark, N.J.-Mexico City, Mexico nonstop market contained in Pan American's certificate of public convenience and necessity for Route 136.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-31139 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circulars: Small Airplanes Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circulars; part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars

(AC's) issued by the Small Airplane Directorate since January 1991. The AC's listed below relate to part 23 of the Federal Aviation Regulations (FAR) and/or part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature

FOR FURTHER INFORMATION CONTACT:

Mr. Mike Dahl, Manager, Policy and Guidance Section, ACE-111, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64108; commercial telephone (816) 426-6941, or FTS 867-6941.

SUPPLEMENTARY INFORMATION:

Background: These AC's were developed to update existing policy information for small airplane certification programs.

Comments: Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the *Federal Register* to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution: The published AC's are available upon request through the U.S. Department of Transportation, Utilization and Storage Section, M-443.2, Washington, DC 20590.

ADVISORY CIRCULARS PUBLISHED

AC No.	Date	Title
23.1521-1A...	1/2/91	Certification of Nonoxygenated Automobile Gasoline (Autogas) Instead of Aviation Gasoline (Avgas) in Part 23 Airplanes with Reciprocating Engines.
23.1329-2.....	3/4/91	Automatic Pilot Systems Installations Approvals in Part 23 Airplanes.
23-10.....	8/5/91	Auxiliary Fuel Systems for Reciprocating and Turbine Powered Part 23 Airplanes.

Barry D. Clements,

Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc 91-31108 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-44]**Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 20, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 23, 1991.

Pamela Trebbe,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 100CE

Petitioner: Beech Aircraft Corporation

Sections of the FAR Affected: 14 CFR 23.473(c) and 23.1001

Description of Relief Sought: To permit a maximum landing weight less than 95 percent of maximum takeoff weight without requiring a fuel jettisoning system

Docket No.: 25233

Petitioner: Alaska Air Carriers Association

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To extend Exemption No. 4802B which permits pilots employed by air carriers that are members of the Alaska Air Carriers Association to perform the preventive maintenance task of removing and/or reinstalling passenger seats of aircraft used in Part 135 operations.

Docket No.: 26688

Petitioner: Helicopter Association International

Sections of the FAR Affected: 14 CFR 135.63(c) and (d)

Description of Relief Sought: To remove the requirement that members of the Helicopter Association International and the Association of Air Medical Services would need to prepare a load manifest in duplicate for multiengine aeromedical transport aircraft, which often operate from remote areas. In addition, the exemption would delete the requirement for the pilot to carry a duplicate manifest to the destination. Furthermore, it would delete the requirement that the operator maintain a copy of the completed manifest for at least 30 days.

Docket No.: 26695

Petitioner: Comair Aviation Academy
Sections of the FAR Affected: 14 CFR 141.65

Description of Relief Sought: To allow Comair Aviation Academy to hold examining authority for flight instructor and airline transport pilot written tests.

Docket No.: 26696

Petitioner: Ryan International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a)

Description of Relief Sought: To permit Ryan International Airlines, Inc., pilots and flight engineers to complete certain west coast to east coast transcontinental flight sequences with B-727 aircraft before being provided with at least 16 hours of rest, so long as crewmembers satisfy the requirements of § 121.505(a).

Dispositions of Petitions

Docket No.: 20853

Petitioner: United Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.99 and 121.351

Description of Relief Sought/

Disposition: To extend for 3 years the termination date of Exemption No. 3122, as amended. Exemption No. 3122E permits United Airlines, Inc. (UAL), to operate its turbojet airplanes in extended overwater operations with one high frequency (HF) communications radio system and one long range navigation system (LRNS) within certain named areas subject to certain conditions and limitations.

Grant, December 9, 1991, Exemption No. 3122F.

Docket No.: 23336

Petitioner: Simulator Training, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); appendix A of Part 61; and appendix H of part 121.

Description of Relief Sought/

Disposition: To permit Simulator Training, Inc., to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.56(b)(1), 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2), 61.157(e)(1) and (2), appendix A of part 61, and appendix H of part 121 of the FAR. On August 28, 1991 the FAA issued Exemption 5232A, granting Simulator Training, Inc. an extension until December 31, 1991. This grant provides a further extension of Exemption No. 5232A.

Grant, December 31, 1991, Exemption No. 5232B.

Docket No.: 23805

Petitioner: U.S. Department of the Interior

Sections of the FAR Affected: 14 CFR 91.119(b) and (c)

Description of Relief Sought/

Disposition: To permit operations below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet from the aircraft, and closer than 500 feet to persons, vehicles, and structures in other than congested areas.

Grant, December 5, 1991, Exemption No. 5372.

Docket No.: 25559

Petitioner: Aerospace Industries Association

Sections of the FAR Affected: 14 CFR 21.182(a) and 45.11(a)

Description of Relief Sought/

Disposition: To extend Exemption No. 4913A to provide manufacturers of aircraft intended for operation under

Parts 121 or 127 of the FAR, or in commuter air carrier operation (as defined in FAR Part 135 or Special Federal Aviation Regulations (SFAR) 36-4) and that are maintained under a FAA approved continuous airworthiness maintenance program, relief from the requirement to install the identification plate specified in the rule during the production phase. This exemption also applies to aircraft manufactured for export and to all activities until title is transferred.

Grant, December 9, 1991, Exemption No. 4913B.

Docket No.: 26072

Petitioner: Allison Gas Turbine Division of General Motors Corporation

Sections of the FAR Affected: 14 CFR 13.211

Description of Relief Sought/

Disposition: To amend Exemption No. 219A to expand the installation eligibility of Allison Model 250 series turboshaft engines on Type Certificate (TC) E4CE to include Transport Category A rotorcraft certificated under either Part 29 of the Federal Aviation Regulations or Part 7 of the Civil Air Regulations.

Grant, December 10, 1991, Exemption No. 219B

Docket No.: 26302

Petitioner: Flight Safety International

Sections of the FAR Affected: 14 CFR 135.293, 135.297, 135.299, 135.303, 135.337, and appendix H of Part 121

Description of Relief Sought/

Disposition: To amend Exemption No. 5241 so as to add a new condition and revise certain other conditions and limitations of Exemption No. 5241 to permit the use of visual simulators for training and checking FSI instructors. This amendment also allows FSI instructors to train and check a contracting operator's pilots in visual simulators, and extends the termination date of Exemption No. 5241.

Partial grant, December 9, 1991, Exemption No. 5241B

Docket No.: 26551

Petitioner: Flight Trails d/b/a Air Resorts Airlines

Sections of the FAR Affected: 14 CFR 121.356

Description of Relief Sought/

Disposition: To permanently exempt from § 121.356 of the Federal Aviation Regulations which requires Air Resorts Airlines (ARA) to install an approved Traffic Alert and Collision Avoidance System (TCAS) II in its airplanes. Alternatively, ARA petitions to be exempt from the requirement that 50 percent of its airplanes be equipped with TCAS II by no later than December 30, 1991.

Denial, December 11, 1991, Exemption No. 5376

Docket No.: 26577

Petitioner: Jet Tech, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), Appendix A of Part 61, and Appendix H of Part 121

Description of Relief Sought/

Disposition: To exempt Jet Tech, Inc., from certain training and testing requirements of §§ 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), appendix A of Part 61, and appendix H of part 121 of the Federal Aviation Regulations and permit Jet Tech, Inc., to use FAA approved simulators to meet certain training and testing requirements.

Grant, December 16, 1991, Exemption No. 5377

Docket No.: 26609

Petitioner: Jet Exam, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), appendix A of part 61, and Appendix H of Part 121

Description of Relief Sought/

Disposition: To permit Jet Exam, Inc., to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.57 (c) and (d); 61.157(e); Appendix A of Part 61; and Appendix H of Part 121 of the FAR.

Grant, December 11, 1991, Exemption No. 5373

Docket No.: 26644

Petitioner: Miami Flight Training Academy, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.75 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.57(d) (1) and (2), 61.157(e) (1) and (2), appendix A of part 61, and Appendix H of Part 121

Description of Relief Sought/

Disposition: To permit Miami Flight Training Academy, Inc., to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.57 (c) and (d); 61.157(e); Appendix A of Part 61; and Appendix H of Part 121 of the FAR.

Grant, December 11, 1991, Exemption No. 5374

Docket No.: 26654

Petitioner: American Aviation Flight Academy

Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2),

61.157(e) (1) and (2), appendix A of part 61, and appendix H of Part 121

Description of Relief Sought/

Disposition: To permit American Aviation Flight Academy to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.57 (c) and (d); 61.157(e); appendix A of part 61; and appendix H of part 121 of the FAR.

Grant, December 11, 1991, Exemption No. 5375

Docket No.: 26474

Petitioner: Deere & Company

Sections of the FAR Affected: 14 CFR 21.197(a)(1)

Description of Relief Sought: To amend Exemption No. 5348 in order to allow Deere & Company to operate their new Cessna Model 650, N900JD, serial number 650-0213 under the provisions of Exemption No. 5348. Exemption No. 5348 was issued on October 10, 1991 and subject to certain conditions and limitations, allows Deere & Company to operate their Cessna Model 650, N900JD, serial number 650-0035, without obtaining a special flight permit when the flaps fail in the up position.

[FR Doc. 91-31106 Filed 12-27-91; 8:45 am]

Billing Code 4910-13-M

[Summary Notice No. PE-91-43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 9, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915 G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulation (14 CFR part 11).

Issued in Washington, DC, on December 23, 1991.

Pamela Trebbe,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26706.

Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 121.337.

Description of Relief Sought/

Disposition: To allow member airlines of the Regional Airline Association and similarly situated airlines which operate shorts SD 3-60 airplanes an extension of 6 months, until August 18, 1992, to complete the installation of protective breathing equipment for flight crewmembers on the flightdeck.

[FR Doc. 91-31107 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 24, 1992, at 9 a.m. Arrange for oral presentations by January 10, 1992.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport

Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20006-5206.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on January 24, 1992, in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20591. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- Future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 10, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 20, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-31110 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 4, 1992, at 9 a.m. Arrange for oral presentations by January 21, 1992.

ADDRESSES: The meeting will be held in the Goddard Room A and B, Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on February 4, 1992, in the Goddard Room A and B, Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC 20005. The agenda for this meeting will include:

- Consideration of the final report of the Systems Review Working Group.
- Proposed task statements for the Airworthiness Assurance Working Group and for a parallel working group for commuter airplanes.
- Agreement to final subcommittee processes.
- Status reports from working groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 21, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 20, 1991.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-31112 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

General Aviation and Business Airplane Subcommittee on the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation and Business Airplane Subcommittee on the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 29, 1992, at 9 a.m. Arrange for oral presentations by January 15, 1992.

ADDRESSES: The meeting will be held in Classroom 3, British Aerospace Training Center, 22170 Broderick Drive, Sterling, VA 22170.

FOR FURTHER INFORMATION

CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. 11), notice is given of a meeting of the General Aviation and Business Airplane Subcommittee to be held on January 29, 1992, in Classroom 3, British Aerospace Training Center, 22170 Broderick Drive, Sterling, VA. The agenda for this meeting will include:

- Status reports from working groups.
- A briefing from the staff of the Aircraft Certification Small Airplane Directorate on the Directorate's Part 23 Harmonization program. The subcommittee will then develop recommendations to the Director, Aircraft Certification Service, as to the working groups the General Aviation and Business Airplane Subcommittee should be asked to form on the part 23 Harmonization Program.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 15, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 18 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on December 20, 1991.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-31111 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

Capital Airport, Springfield, IL; Notice of Intent to Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose a passenger facility charge (PFC) at Capital Airport, Springfield, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the

application to impose a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and 14 CFR part 158.

On December 6, 1991, the FAA determined that the application to impose a PFC submitted by the Springfield Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 28, 1992.

DATES: Comments must be received on or before January 29, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Springfield Airport Authority at the following address: Capital Airport, Springfield Airport Authority, Springfield, Illinois 62707.

Comments from air carriers and foreign air carriers may be in the same form as provided to Springfield Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018, (312) 694-7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of proposed PFC: \$3.00.
Proposed charge effective date: May 1, 1992.

Proposed charge expiration date: April 30, 1994.

Total estimated PFC revenue: \$749,000.00.

Brief description of proposed projects:

1. Aircraft Rescue Firefighting Vehicle;
2. Overlay Runway 18/36;
3. Rehabilitate Taxiway A;
4. Widen Runway 4/22 at Both Ends;
5. Edge Lighting Improvements;
6. Taxiway CA Overlay;
7. Snow Removal Equipment Building, Site Work;
8. Snow Removal Equipment Building, Phase I;
9. Snow Removal Equipment Building, Phase II;
10. Acquisition of Boucher Property;
11. Acquisition of Niehaus Property;

12. Acquisition of Richardson Property;

13. Acquisition of Miller Property;
14. Acquisition of Bramblett Property;
15. Acquisition of Harris Property;
16. Snow Removal Equipment;
17. Airfield Signage (Phase II);
18. Security/Access Modification to meet Part 107.14 Requirements and Replace Airport Perimeter Fencing;
19. Environmental Assessment For Runway 12/30 Extension;
20. Extension of Runway 12/30;
21. Newly Required FAA Signage;
22. Two (2) Dodge Ram Chargers;
23. Removal of Selected Underground Storage Tanks;
24. Installation of Fuel Farm.

Availability of Application

Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application at the Springfield Airport Authority.

Issued in Des Plaines, Illinois, on December 18, 1991.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 91-31113 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds; U.S. Capital Insurance Company

The above mentioned company was listed in 56 FR 30165, July 1, 1991, as a surety company acceptable on Federal bonds. Federal bond-approving officers are hereby notified that U.S. Capital Insurance Company is required by State law to conduct business in the State of California as U.S. Capital Insurance Company DBA MultiPlus Insurance Co.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1991 Revision, to indicate that U.S. Capital Insurance Company DBA MultiPlus Insurance Co. is acceptable on Federal bonds in the State of California.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874-6850.

Dated: December 23, 1991.

Charles F. Schwan III,

Director, Fund Management Division,
Financial Management Service.

[FR Doc. 91-31158 Filed 12-27-91, 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Management of Central and East European EFL Fellow Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The U.S. Information Agency (USIA) solicits interest from U.S. professional, not-for-profit institutions/organizations in conducting the recruitment and placement of 58 English as a Foreign Language (EFL) Fellows and English as a Foreign Language and English for Specific Purposes (EFL/ESP) Fellows as well as handling attendant administration for a special East European EFL Fellow program to provide EFL teacher trainers for teachers of English and ESP teachers in Albania, Poland, Hungary, Czechoslovakia, Romania, Bulgaria, Yugoslavia, Estonia, Latvia and Lithuania. This program is subject to the availability of funds from Support for East European Democracy III (SEED III) funding for Fiscal Year 1992.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on January 21, 1992. Faxed documents will not be accepted, nor will documents postmarked on January 20, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin February 17, 1992.

ADDRESSES: The original and 10 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Management of Central and Eastern European EFL Fellow Program, Office of the Executive Director, E/X, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact William B. Royer, Jr. at U.S. Information Agency, 301 4th St., SW., Office of Cultural Centers and Resources, English Language Programs Division, E/CE, room 304, Washington, DC 20547, Telephone (202) 619-5869 to request detailed application packets, which include award criteria additional to this announcement, all necessary

forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

The U.S. Information Agency (USIA) is soliciting proposals from U.S. professional, not-for-profit institutions/organizations to recruit and place 58 EFL Fellows and to handle attendant administration, including travel arrangements and payment of stipends, for a special Eastern European EFL Fellow program. The program is meant to provide teacher trainers for teachers of English and ESP teachers for Albania, Poland, Hungary, Czechoslovakia, Romania, Bulgaria, Yugoslavia, Estonia, Latvia and Lithuania. Recruitment will be conducted to fill positions in accordance with the basic objective of USIA's Fellow program for Central and Eastern Europe and the Baltic States, which is to promote the teaching of English as a vehicle to developing democracies throughout the region. The EFL Fellow Program, initiated last year with SEED II funding, was a response to the dramatic increase in the demand for English caused by the political changes in Eastern Europe and the shift in intellectual input from East to West. SEED III continues and expands the effort to promote English teaching in the region, thereby increasing the English language capability of Central and Eastern Europeans. Albania has been added to the list of countries receiving assistance under this program as have the Baltic States of Lithuania, Latvia, and Estonia. As in the first year of the program, USIA proposes to focus its resources on two areas: a) In-service teacher training; b) English for specific purposes (ESP). Personnel in the form of Eastern European EFL Fellows will coordinate and implement the teacher training program as well as teach individual language courses in ESP.

Guidelines

Among the responsibilities of the institution/organization receiving the assistance award will be:

1. Recruiting and Placing Fellows

This will include the following:
—Disseminate information through domestic and international mailings and other means concerning the Eastern European Fellow program;

place an advertisement in the TESOL Placement Bulletin;

- Arrange for and carry out interviews of all candidates having acceptable qualifications at, but not limited to, the annual TESOL convention in Vancouver, B.C. March 3-7, 1992 in collaboration with USIA's English Language Programs Division; (At least two interviewers should be assigned to this task;)
- Conduct all correspondence necessary to complete professional dossiers of each EFL Fellows candidate to be interviewed; establish and define duties expected of each EFL Fellow at the institution assigned, through correspondence with that institution in the particular country and in consultation with USIA's English Language Programs Division;
- Answer CVs and letters of inquiry with 'applicant package' of application materials, designed in consultation with USIA; enter data from applications/CVs into an ETF applicant database, on Paradox, sorting for experience, language, area preference, degree; contact candidates in priority order for acceptances based on best aggregate qualifications; print and mail Terms and Conditions of the ETF grant, letter of appointment, tax information, health insurance info and certificate to the nominee and secure the signed terms and conditions and the health certificate.

2. Finances and Payments

- Process the payments and financial arrangements and distribute the stipend checks to Fellows.
- Maintain budget figures for the program on a spreadsheet.

3. Travel

- Make all travel arrangements for the fellows to include travel from residence to Washington to place of assignment and return home, including finalizing their itineraries, booking, and mailing tickets and orientation letter to them.
- Finalize costs and update budget spreadsheet with final amount.

4. Orientation

- Arrange for and implement five-day orientation program for fellows in Washington, utilizing both outside experts and USIA officers, in consultation with USIA's English Language Programs Division. Oversee their departure to post.
- Finalize the agenda; design, type, and print handouts; type insurance cards for ETFs.

5. Review

Prepare and submit an evaluation report to USIA at mid-point and at the conclusion of the project.

Note: The period of the grant will be from February 17, 1992 to August 31, 1993.

Proposal should include allowance for a representative of the assistance award recipient institution/organization to visit Eastern European sites proposed for the EFL Fellows in order to become familiar with conditions at the host institutions.

Qualifications Required of the Responding Organization

To carry out the above tasks the institution/organization must be a not-for-profit or educational organization. It must have four years of international experience and possess a proven ability to network that provides and allows for the greatest dissemination of information to and among the profession of Teachers of English as a Second or Foreign Language; must be able to provide knowledgeable, TEFL-qualified, experienced staff capable of interviewing candidates and evaluating their qualifications for teaching, and/or for developing materials, or for conducting teacher-training in the context of English as a foreign language, in accord with criteria established by USIA.

Proposed Budget

The grantee organization will be required to submit a comprehensive line item budget for which specific details are available in the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA

officers for advisory review. All eligible proposals may also be reviewed by the Agency's office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of program plan and adherence of the proposed activity to the criteria and conditions described above.
2. Reasonable, feasible, and flexible objectives. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
3. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.
4. Clear evidence of the ability to efficiently recruit and place suitable grantees for the Eastern European Fellow Program as described above. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.
5. Demonstrated ability to gain access to and network with EFL/ESL professionals and programs.

6. Proposed personnel and institutional resources. These should be adequate and appropriate to achieve the program or project's goals. The proposal should include evidence of strong administrative and managerial capabilities and project management experience. At least two persons should be assigned to the recruiting and placement of the Fellows at the TESOL convention and afterwards.

7. Proposal should provide for a quarterly formative evaluation by the grantee institution and a summative evaluation at the conclusion of the project.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about February 17, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 19, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-31018 Filed 12-27-91; 8:45 am]

BILLING CODE 6230-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 2, 1992.

An open meeting will be held on Friday, January 3, 1992, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Friday, January 3, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Friday, January 3, 1992, at 10:00 a.m., will be:

1. Consideration of whether to adopt revisions to the shareholder communications and related rules to implement provisions of the Shareholder Communications Improvement Act of 1990. These amendments would require: (1) investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of the registrant; and (2) brokers and banks that hold shares for beneficial owners of securities in nominee name to forward to the beneficial owners the proxy statements of investment companies registered under the Investment Company Act ("Investment Company Act registrants"), as well as the information statements of both Investment Company Act registrants and companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934. The amendments, if adopted, will be effective with respect to shareholder meetings held, or corporate action taken by consent or authorization, on or after March 31, 1992. For further information, please contact Elizabeth M. Murphy, Division of Corporation Finance at (202) 272-2589; with regard to investment company issues, Kathleen K. Clarke, Division of Investment Management at (202) 272-2107.

2. Consideration of whether to adopt proposed Rule 17Ad-15 under the Securities Exchange Act of 1934 and an accompanying release that would provide for acceptance of signatures for eligible guarantor institutions

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on an equitable basis. Rule 17Ad-15 would: (1) prohibit inequitable treatment of eligible guarantor institutions; (2) require transfer agents to establish written standards for the acceptance of signature guarantees; and (3) enable transfer agents to reject a request for transfer because the guarantor is neither a member of or a participant in a signature guarantee program. For further information, please contact Ester Saverson, Jr. at (202) 272-2775.

3. Consideration of whether to issue for comment proposed rule 17Ad-16 under the Securities Exchange Act of 1934. The rule would require a registered transfer agent to provide written notice to at least one registered securities depository when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address. For further information, please contact Ester Saverson, Jr. at (202) 272-2775.

The subject matter of the closed meeting scheduled for Friday, January 3, 1992, at 2:30 p.m., will be:

Consideration of *amici* participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272-2000.

Jonathan G. Katz,

Secretary

December 24, 1991.

[FR Doc. 91-31241 Filed 12-26-91; 12:46 pm]

BILLING CODE 8010-01-M

Federal Register

Monday
December 30, 1991

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 56 et al.

Confined Spaces; Advance Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 70, 71, and 75

RIN 1219-AA54

Confined Spaces

AGENCY: Mine Safety and Health Administration, Labor.**ACTION:** Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing regulations to reduce the incidence of accidents, injuries, and deaths caused by the hazards related to entering and working in confined spaces in mining. The Agency intends to develop a comprehensive regulation dealing with all aspects of confined spaces. This notice outlines issues on which MSHA is seeking comments and information from the mining community concerning the scope and content of a confined spaces standard and its potential impact on the mining industry.

DATES: All comments and information should be submitted by February 28, 1992.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 29, 1989, MSHA published a proposed rule addressing air quality at mines (54 FR 35760). In that standard, which addresses dangerous atmospheres, MSHA defined confined space as one that "by design has restricted openings for entry and exit, an unfavorable atmosphere that could contain or produce dangerous air contaminants, and is not intended for continuous occupancy." Under this definition, confined spaces in mining would include bins, hoppers, silos, storage tanks, surge piles, draw-off tunnels, and processing vats that may be entered for cleaning or other maintenance. In the proposed rule, MSHA identified hazardous gases and vapors, and oxygen deficiency as hazards associated with confined spaces. MSHA intends that the comprehensive confined spaces standard will supersede the confined spaces provisions in the air quality rulemaking.

In developing a comprehensive confined spaces standard, MSHA also will consider the hazards of engulfment and entrapment. The vast majority of confined space mining fatalities are caused by engulfment and entrapment. The restricted area of confined spaces also increases the dangers posed to rescuers when a miner must be removed from a confined space. MSHA's review of accident investigation reports from 1980 through 1991 reveals that 45 metal and nonmetal mine fatalities and 33 coal mine fatalities involved confined spaces. MSHA believes a comprehensive confined space standard could have prevented some of these 78 fatalities.

Accident investigation reports also indicate that many mine operators do not fully recognize that hazards such as engulfment and entrapment are exacerbated by conditions of confined space work, or that existing MSHA standards apply to hazards wherever they are found including in confined spaces. The development of the confined spaces standard will consolidate operator responsibilities relative to confined spaces.

To develop a confined spaces standard, MSHA will consider its own data as well as information from the Occupational Safety and Health Administration (OSHA), the National Institute for Occupational Safety and Health (NIOSH), State regulations, company programs and any other relevant information. Outlined below are summaries of current MSHA regulations, OSHA's proposed confined spaces rule which requires a permit for entry, and NIOSH's criteria document "Working in Confined Spaces."

MSHA. Currently, MSHA standards require all operators to train miners in hazard recognition and avoidance (30 CFR part 48). This training includes hazards associated with confined spaces. MSHA also requires metal and nonmetal operators to post warning signs to warn miners at areas that contain hazards that are not immediately obvious (§§ 56/57.20011) and to label toxic substances in a manner that identifies both the hazard involved and the protective action required (§§ 56/57.20012). Additionally for metal and nonmetal mines, §§ 56/57 16002 require that individuals entering bins, hoppers, silos, tanks, and surge piles be equipped with mechanical devices or other effective means of handling materials so that they are not exposed to entrapment or other hazardous conditions.

OSHA. On June 5, 1989, OSHA published its proposed rule "Permit Required Confined Spaces" (54 FR 24080). In the proposed rule, OSHA

introduced the term "permit required confined space" to cover the particular confined spaces it would regulate. OSHA defined a "permit required confined space" as "an enclosed space which—

(i) Is large enough and so configured that an employee can bodily enter and perform assigned work;

(ii) Has limited or restricted means for entry or exit (some examples are tanks, vessels, silos, storage bins, hoppers, vaults, pits and diked areas);

(iii) Is not designed for continuous employee occupancy; and,

(iv) Has one or more of the following characteristics:

(A) Contains or has a known potential to contain a hazardous atmosphere;

(B) Contains a material with the potential for engulfment of an entrant;

(C) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls, or a floor which slopes downward and tapers to a smaller cross-section; or

(D) Contains any other recognized serious safety or health hazard."

According to OSHA, confined spaces may include such areas as storage vessels, furnaces, railroad tank cars, manholes and autoclaves.

Under its proposed rule, OSHA would require employers to survey their workplaces, identify "permit spaces" and permanently block or post warning signs at any spaces which employees would never enter. If employers require employees to enter "permit spaces," they would have to develop a written program to identify hazards in each permit required space, restrict access to authorized personnel, control hazards and monitor a space during entry to ensure the safety and health of the worker entering a confined space.

The proposed standard would permit employers to rely on in-house rescue teams with proper training and equipment and a member certified in first aid and cardiopulmonary resuscitation, or the employer could plan to call in outside rescuers provided they are informed of potential hazards to enable them to prepare and equip themselves properly. The proposed standard would also require training for entrants, attendants, and permit authorizers.

OSHA's proposed rule classifies certain "permit required confined spaces" into a subcategory of "low-hazard permit spaces." Low-hazard permit spaces would be confined spaces with a very low likelihood of a flammable or explosive atmosphere, atmospheric toxins or engulfment hazards. Low-hazard spaces would require permits but no attendants.

NIOSH. In December 1979, NIOSH published a criteria document "Working in Confined Spaces," that identifies confined workspaces and work practice guidelines. NIOSH defines a confined space as "a space which by design has limited openings for entry and exit; unfavorable natural ventilation which could contain or produce dangerous air contaminants, and which is not intended for continuous employee occupancy." According to NIOSH, confined spaces include but are not limited to storage tanks, compartments of ships, process vessels, pits, silos, vats, degreasers, reaction vessels, boilers, ventilation and exhaust ducts, sewers, tunnels, underground utility vaults, and pipelines.

NIOSH classifies confined spaces into three subcategories: Class A—immediately dangerous to life; Class B—dangerous but not immediately life threatening; and Class C—potential hazard. Additionally, NIOSH's document provides oxygen, flammability and toxicity characteristics for each of these subcategories.

NIOSH lists eleven recommendations for entry, working in and exiting confined spaces. These recommendations consist of: permit; atmospheric testing; monitoring; medical surveillance; training of personnel; labeling and posting; preparation of a confined space; working procedures; safety equipment and clothing; rescue equipment; and recordkeeping/exposure. The application of these requirements differs among the classes. Class A has the most mandatory requirements, while Class C allows for a determination by a qualified individual for many provisions.

General Approach and Scope of an MSHA Standard

Confined space accidents in mining result from many different causes including asphyxiation, engulfment, entrapment, burn and explosion injuries, electrical shock, other mechanical and physical hazards, and exposure to toxic materials. MSHA requests comments on how these hazards should be addressed, as well as on the following general issues. Recommendations for specific provisions should include a rationale for their inclusion.

1. Should an MSHA standard include the same general concepts as OSHA's proposed "Permit Required Confined Spaces" standard? What would it cost a mine operator to comply with OSHA's proposed rule? What specific elements of the OSHA proposed rule should MSHA include or exclude in its standard? What costs would be associated with these elements? What

elements should be mandatory or voluntary?

2. Should an MSHA standard include the same general concepts as NIOSH's criteria document? What would it cost a mine operator to comply with NIOSH's program? What specific elements of NIOSH's criteria document should MSHA include or exclude in its standard? What costs would be associated with these elements? What elements should be mandatory or voluntary?

3. MSHA is aware of three States which currently have confined space regulations; Maryland, Washington and Virginia. Are there other State regulations relating to confined spaces that MSHA should consider? What does it cost a mine operator to comply with these regulations? What specific elements of State regulations should MSHA include or exclude in its confined spaces standard? What costs are associated with these elements? What elements should be mandatory or voluntary?

4. Do you have or are there any company programs relating to confined spaces that MSHA should consider in the development of its confined spaces standard? What does it cost to operate such programs? What specific elements of these programs should MSHA include or exclude in its confined spaces standard? What are the costs associated with these elements? What elements should be mandatory or voluntary?

5. For operators with mining properties as well as properties regulated by other agencies, how should MSHA avoid conflicting provisions and duplication?

6. Are there any other relevant regulations, programs or data that MSHA should consider in developing its confined spaces standard?

Specific Issues Identified for Comment

MSHA is seeking comments and data on a number of specific issues in this advance notice of proposed rulemaking. Since an MSHA standard would affect all of the mining industry, commenters should provide a rationale for any suggestions, including specific data to support their respective positions based upon particular mining methods, practices, operational conditions, etc. MSHA requests comments on all aspects of a confined spaces standard and on the following issues in particular:

1. Should MSHA develop a new definition for "confined space" or use one of the following:

—The definition used in MSHA's August 29, 1989, air quality proposed rule (54 FR 35760);

—The definition used in OSHA's proposed rule "Permit Required Confined Spaces" (54 FR 24080); or
—The definition used in NIOSH's criteria document "Working in Confined Spaces."

2. How should confined spaces be classified? Should MSHA use a classification system similar to OSHA's or NIOSH's? Are there other classification systems that MSHA should consider?

3. How should confined spaces be identified or labeled for mine employees?

4. Should MSHA's standard contain minimum communication requirements between individuals within confined spaces and attendants on the outside? What would be the cost of the communication system, including maintenance? What communication procedures should be implemented in addition to those established in MSHA's air quality proposed rule?

5. Should MSHA's standard require posting of written permits at entrances into confined space areas? What would be the cost of materials and labor necessary to do posting? Should attendants be required? How many attendants would be needed and under what conditions? What conditions do not require an attendant?

6. Should MSHA's standard address duties and responsibilities of miners required to act as attendants at the entrance to a confined space?

7. What special training should miners receive? How should training for confined spaces interact with part 48 training? How often should it be provided? What training should be required for: (1) individuals who evaluate confined spaces and develop appropriate entry procedures; (2) miners who perform work in a confined space; (3) and miners who act as attendants at entrances of confined spaces? What would be the cost of this training, including the instructor's and trainee's time and labor as well as the cost of any materials?

8. MSHA has identified the following chemical hazards associated with confined spaces: flammable substances, explosives, toxic substances, and oxygen deficient or enriched atmospheres. For each hazard—

What requirements should be implemented for cleaning, purging, deactivating, or ventilating prior to entry into confined spaces? What equipment would be necessary? What would be the cost of these procedures and equipment? Under what conditions should these hazards be tested either before or during entry? What testing methods and

instrumentation should be used and how should they be maintained? How often should these tests be performed, and how much do they cost? What personal protective equipment is necessary? What safety procedures and equipment should be used? What rescue equipment is necessary?

9. What type of respiratory protection in addition to that required in the air quality proposed rule should MSHA require for confined spaces? How should respiratory protection be integrated with MSHA's air quality proposed rule?

10. What limitations should be placed on welding and hot operations in confined spaces?

11. MSHA has identified the following physical hazards associated with confined spaces: engulfment, entrapment, electrical, and mechanical hazards. For each hazard—

What requirements should be implemented for blocking, cleaning, deenergizing, lockout and tagout, stabilizing, or ventilating prior to entry and during work in confined spaces? What equipment would be necessary? What would be the cost of these procedures and equipment? Under what conditions should these hazards be tested either before or during entry? What testing methods and instrumentation should be used and how should they be maintained? How often should these tests be performed, and how much do they cost? What personal protective equipment is necessary? What safety procedures and equipment should be used? What rescue equipment is necessary?

12. Numerous engulfment and entrapment fatalities in mining result from miners being drawn into confined

spaces while performing work near or above the confined spaces; that is, working on unstable material which is located above a draw point. How should MSHA address these hazards?

13. What other hazards and issues associated with confined spaces should MSHA address?

14. What labor categories are normally employed in confined space work? What are the wages of these employees? What portion of their time do they spend on confined space work and related safety work practices?

Dated: December 20, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-31010 Filed 12-27-91; 8:45 am]

BILLING CODE 4510-43-M

Environmental Protection Agency

Monday
December 30, 1991

Part III

Environmental Protection Agency

40 CFR Part 82

Stratospheric Ozone Protection; Direct Final Amendment to Temporary Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4087-71]

Protection of the Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final amendment to the temporary final rule.

SUMMARY: Today's action makes several revisions to EPA's Stratospheric Ozone Protection temporary final rule published on March 6, 1991 (56 FR 9518). The March 6 rule implemented the requirements of section 604 of the Clean Air Act Amendments of 1990 for the year 1991 only. As originally published, the rule placed production and consumption restrictions on three previously unregulated groups of ozone-depleting chemicals as well as the previously-regulated chemicals (five chlorofluorocarbons and three halons) by allocating production and consumption allowances to producers and importers of the chemicals. A company must have both production and consumption allowances to produce these chemicals and consumption allowances only to import these chemicals.

The temporary final rule specified baseline allowances for importers and producers of the newly controlled substances. It also shifted the control period from a July through June period to a calendar year basis. Finally, it added record-keeping and reporting requirements for the new chemicals, while keeping in place most of the provisions of the original rule under 40 CFR part 82 that implemented restrictions on ozone-depleting chemicals under the Montreal Protocol on Substances that Deplete the Ozone Layer.

There are several provisions of the temporary final rule which require adjustment. The rule introduced a mechanism for producers of controlled substances that lacked baseline allowances (due to the large volume of their production that was transformed or exported, and thus not "consumed," in the baseline year) to petition for allowances with which to begin the production process for 1991. However, it did not include a requirement that the companies hold at least an equal volume of unexpended allowances at the end of the year. Without this requirement, companies could produce (and not transform) levels of the chemical equal to the allowances they had received through the petition process, and the

companies' production and consumption limits could thus exceed the limits prescribed by the Clean Air Act.

Also, the temporary final rule did not include updated appendices which listed controlled substances, Parties to the Montreal Protocol and Article 5 Parties. These appendices are listed in today's rule. In addition, with the control period shift, the temporary final rule shifted the due date for end-of-year export reports to February 15, 1992. However, EPA must still require that information on Group I chemicals be submitted within 30 days to comply with the Montreal Protocol. Finally, the Agency has updated baseline allowance allocations based on receipt of additional documentation of baseline year production, imports and exports. These changes are included in this direct final amendment.

DATES: All the provisions of this amendment to the temporary final rule are effective retroactively from January 1, 1991, unless adverse or critical comments relating to the revision of §§ 82.5 and 82.6 are received by January 29, 1992.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A-91-50 at the Air Docket Room M-1500, First Floor, Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

David Lee, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460, (202) 260-1497.

SUPPLEMENTARY INFORMATION:

A. End-of-Year Balancing of Accounts for Companies Which Petitioned for Up-Front Allowances Under § 82.9(e)

This amendment requires that companies which receive up-front production and consumption allowances under § 82.9(e) must have at least that level of unexpended allowances in their accounts at the end of 1991.

These allowances were originally granted for the purpose of allowing producers of controlled substances to receive baseline allowances to begin the production-transformation cycle. The statute and the rule define production as the manufacture of a substance but not including the manufacture of a

substance that is used and entirely consumed in the manufacture of other chemicals ("transformed") or the reuse or recycling of a substance.

Consumption is production plus imports minus exports. For several companies, the quantity of carbon tetrachloride transformed and exported in the baseline year exceeded or nearly exceeded the amount produced and imported. These companies thus received few or no baseline consumption allowances with which to begin producing carbon tetrachloride at the beginning of 1991. This situation had not occurred previously, when the regulations applied only to CFCs and halons. Carbon tetrachloride, however, is used primarily as a feedstock for the manufacture of other chemicals, and in the United States at least 81% of the carbon tetrachloride produced is transformed each year.

Since EPA's intent in allocating baseline allowances was not to terminate the production of carbon tetrachloride, particularly when it is intended for transformation in which case it presents no danger to stratospheric ozone, the Agency sought to aid these companies by including the petition process in the temporary final rule. Under § 82.9(e), companies whose baseline year exportation and transformation equalled or exceeded its baseline year production and importation were allowed to petition EPA for up-front production and consumption allowances upon providing EPA with documentation showing that an equivalent amount of the controlled substance would be transformed during the 1991 control period.

The Agency in the temporary final rule neglected to add that recipients of these allowances would have to hold an equivalent number of production and consumption allowances at the end of the 1991 control period. Since companies are permitted to request additional allowances after they have transformed controlled substance, a recipient of up-front allowances could exceed its production limit as specified by the Clean Air Act by producing and not transforming an amount equivalent to the allowances granted pursuant to its petition. Section 604 requires that in 1991 no company exceed its baseline level of production of controlled substances in Groups IV and V and that the Agency promulgate regulations implementing similar limits for the consumption of controlled substances in Groups IV and V. If companies with no baseline allowances were to receive up-front allowances and were not required to hold an equivalent amount at the end

of the 1991 control period, they could conceivably exceed the statutory limit on production and consumption of the controlled substances.

EPA believes that this requirement will not create difficulties for affected companies. Once the carbon tetrachloride production cycle is started and the up-front allowances are expended, companies should be able to replace those allowances once the carbon tetrachloride is transformed or exported either by receiving transfers of allowances under § 82.12 or by requesting additional allowances from EPA under §§ 82.9 and 82.10 upon proof that the substance has been transformed or exported.

Sections 82.9 and 82.10 specify that companies that use and entirely consume a controlled substance in the manufacture of another chemical may request additional production and consumption allowances from the Agency. A transforming company may thus receive allowances equal to those expended in the production or importation of the controlled substances. It may then transfer those allowances back to a producing or importing company, if other than itself, and the producer or importer in this way may continue to produce or import controlled substances.

To further facilitate this cycling of allowances, EPA will accept, for transformations occurring within the 1991 control period, requests submitted by February 15, 1992 for allowances for the use of controlled substances as feedstock and for transfers of allowances. This lag period for the completion of paperwork will ensure that all companies will receive full credit for any controlled substances that they may have transformed in the last days of 1991.

B. Apportionment of Allowances

On November 26, 1990, EPA published in the *Federal Register* an information request (55 FR 49116) under section 114 of the Clean Air Act requiring firms to report to the Agency the amount of certain ozone-depleting substances they had produced, imported, exported or transformed in 1989. EPA needed this information to apportion to firms baseline production and consumption allowances for 1991, as well as for future years, as required under § 607 of title VI of the Clean Air Act Amendments of 1990. Although companies were required to respond within 20 days of this information request, several firms were not able to provide EPA with complete documentation of their 1989 activities until after the deadline. The Agency decided to continue accepting

documentation of baseline data, recognizing the shortness of the 20-day response period.

Some of the late data consisted of revisions of previous submissions by large companies that discovered errors in the original data they had reported. These adjustments account for the majority of the significant changes in the allowances. New information was also received from smaller companies, particularly importers and companies that transform controlled substances, that did not become aware of the reporting requirement until after the promulgation of the temporary final rule. Several companies that should have received allowances, based on their 1989 activities, received no allowances in the March 6, 1991 rule and are being added with this amendment.

In this amendment, EPA is making two types of changes to baseline allowances: Changes due to a party's own submissions, and changes due to second-party information on transformation and exports. EPA is making the first type of change to reflect additional information that companies submitted to EPA about their own production, imports, exports and transformation in 1989.

EPA is making the second type of changes to baseline allowances to reflect additional second-party information about exported or transformed materials. Because of the additional information EPA received about the sources of exported or transformed materials, EPA must now adjust those sources' baseline allowances. EPA believes that the adjustments are necessary for the allowances to represent an accurate representation of the baseline year and views this as a noncontroversial amendment. However, since the action takes effect retroactively, the Agency has decided that if adverse comments are received in reference to the baseline allocation by January 29, 1992, the Agency will withdraw the portion objected to through the publication of a *Federal Register* notice. If any portion is withdrawn, it then will be included in a notice of proposed rulemaking and a comment period will be established.

EPA considered but rejected a third type of change to baseline allowances. EPA had used correction factors in the original baseline allocation to balance out unattributed exports and transformations. Due to the additional information EPA received after the original baseline allocation, the levels of unattributed exports and transformation has changed, and thus the correction factors would as well. The application of the adjusted correction factors to the

new data would have reduced many companies' allowances by a fraction. For example, all Group IV and Group V production allowances would have been reduced by 0.10 percent, and Group V consumption allowances would have been reduced by 0.30 percent. EPA has decided that it is not appropriate to apply these correction factors to the new data, because the purpose of this amendment is solely to make adjustments to previously-granted allowances. The application of the correction factors at the initial allocation stage was an appropriate way to balance out unattributed allowances. However, applying correction factors at this stage, after baseline allocations have already been made, could be seen as a regulatory "taking."

The baseline allowances for Groups III, IV and V published here are adjusted to reflect the additional data. EPA revised the baseline production and consumption allowances by adding to or subtracting from the March 6, 1991 allocations using the company's own additional information or additional second-party information. A company that submitted no new information and was not noted in any second-party information would therefore have no change in its baseline allowance.

A company's production equals the total amount of the substance manufactured in 1989 minus the amount of its production that was transformed in that year and excluding any amount made by that company from reused or recycled substances. A company's consumption equals its production plus its imports minus its exports during the baseline year. Thus, if a company belatedly discovered that it had imported 50 kilograms (calculated level) more of a substance than originally reported, EPA simply added 50 to the company's baseline consumption allowances as published in the March 6 rule.

Most changes were due to companies' revision of their own submissions. One company discovered after the publication of the temporary final rule that recycled material had been reported by them as production. Another company discovered that production that had occurred at one plant had afterwards been transformed at another plant, and thus should not have been included as production. A third company stated that all the companies that transform its product had not reported to EPA and thus their production numbers were artificially elevated.

EPA does not believe that the adjustments to the baseline will cause

any difficulties for companies. Those that revised their data are aware that EPA intends to incorporate their revisions for the 1991 control period. Quarterly production and import reports indicate that no company will be placed out of compliance by this action. Indeed, at least 3 companies could have significant compliance problems without the revision of these allowances.

In addition, there is no adverse environmental impact due to these changes. The net effect of the baseline revision is a reduction of the total amount of available allowances.

In evaluating the baselines for this notice, it became clear that the definition of transformation needed to be further clarified. There were several firms that used a chemical process during which carbon tetrachloride was decomposed but did not become part of the final product. EPA determined originally that the process did not transform carbon tetrachloride since it was not a feedstock that became part of another chemical. This decision was based on the assumption that the exclusion from production of "the manufacture of a substance that is used and entirely consumed in the manufacture of other chemicals" was intended for feedstock chemicals used to make "other chemicals" to be sold commercially.

The Parties to the Protocol have not addressed the application of the transformation provision to cases where the chemical is used up in a manufacturing process without its actually being incorporated in the commercial product. The Agency, at the time of the temporary final rule, was thus unsure of the appropriateness of excluding production used up in this way from a company's baseline production.

Since the temporary final rule was issued, EPA has reconsidered this issue. Companies with these types of processes (e.g., refineries that use carbon tetrachloride to regenerate a catalyst with free chlorine) are being designated as transformers through this amendment and thus amounts used up in these processes are subtracted from the production allocations of the companies that produced the chemicals. The overall effect of this revision on baseline allocations is very small, as the amounts of carbon tetrachloride used in these processes are minute. The Agency now believes that carbon tetrachloride used in such a process should be considered "transformed" on the theory that the carbon tetrachloride is used as a feedstock to produce another chemical, which, although not sold as a product, is used commercially in a

manufacturing process. This interpretation is fully consistent with the text and the fundamental intent of both the Protocol's and the Clean Air Act Amendments' definition of production.

Most firms that submitted their 1989 production, import, export and transformation levels to EPA in response to the November 26 information request claimed the data as confidential business information (CBI). EPA has not yet ruled on those claims, but production, import, export and transformation levels are the type of information that may be entitled to confidential treatment. The Agency has treated the information claimed CBI as confidential in accordance with its business confidentiality regulations at 40 CFR part 2, subpart B, and so has not placed it in the public docket for this rulemaking. A full discussion of the confidentiality issues involved in the publishing of baseline allowances is included in the March 6, 1991 temporary final rule.

In many cases, companies claimed the information which was requested in the November 26, 1990 request to be confidential business information. As required by 40 CFR 2.301(g), EPA sent a letter to notify companies producing or importing the newly regulated ozone-depleting substances that the Agency intended to publish each company's allowances in the *Federal Register* for the March 6, 1991 temporary final rule. Since this notice includes only minor changes to the allowances originally published, and there were no objections to publishing the allowances at that time, only companies that were not included in the March 6 rulemaking were given the official 10-day comment period for the publishing of information claimed confidential.

C. End-of-Year Export Report

This amendment also requires companies that exported controlled substances in Group I from July 1, 1990 through June 30, 1991 to report to the EPA by January 29, 1992, any exports during that period which were not previously reported in requests for additional consumption allowances and authorizations to convert. These reports should include any exports for which additional consumption allowances and authorizations to convert were requested but not granted by EPA. In the March 6 rulemaking, EPA inadvertently moved the date for the end-of-year export report from August, 1991 to February, 1992 for all the chemical groups. Although for the purposes of all other reports, the control period is shifted under the Clean Air Act to coincide with the calendar-year, for the

Group I end-of-year reporting requirement under § 82.13(h), this information is needed by EPA for the purpose of complying with Montreal Protocol reporting requirements for the period beginning on July 1, 1990 and ending on June 30, 1991. This requirement will only apply for this control period and for Group I chemicals.

Companies may request additional consumption allowances and authorizations to convert for the exports included in the report until December 31, 1991, if they should choose to do so. In such cases, firms should also complete the appropriate reports to receive allowances for those exports. The end-of-year report will be used solely in the Agency's report to the Parties and does not affect the Clean Air Act allowance tracking system.

D. Publication of Appendices

Finally, revisions to the appendices which were inadvertently left out of the March 6, 1991 rule, are being published with this notice. Since the August 12, 1988 rule (53 FR 30566) which published these appendices, more chemicals have been added to the list of controlled substances, additional countries have become Parties to the Montreal Protocol, and additional countries have been granted Article 5 status. The newly-listed chemicals are those added by title VI of the Clean Air Act Amendments of 1990 and the addition of the newly-listed Protocol Parties and Article 5 countries is based on information obtained from the Protocol Secretariat.

E. Justification for the Direct Final Amendment

EPA finds it necessary to promulgate this amendment without giving prior notice and an opportunity for public comment for reasons the same as or related to those that EPA gave in the preamble to the temporary final rule for not providing prior notice and an opportunity to comment on that rule. At that time, EPA stated that it was necessary to forgo prior notice and an opportunity for comment because section 604 of the Clean Air Act called for production and consumption limits to take effect January 1, 1991. Production limits are self-effectuating under title VI. In order for the limits on production as well as consumption to be achieved, EPA believed it necessary to promulgate temporary regulations as soon as possible. However, the Agency found it impossible to promulgate regulations through notice and comment rulemaking in the short period between enactment

of the Clean Air Act Amendments on November 15, 1990 and January 1, 1991.

Today's amendment includes relatively minor changes to the March 6, 1991 temporary final rule that are nonetheless important to fair and effective implementation of section 604's limits. It grants several companies allowances for groups of chemicals for which they had received no allowances because of their inability to submit the requisite documentation in time for the March 6 rule. To prevent these companies from having to shut down operations that section 604 permits, EPA believes it appropriate to grant them allowances now. Other companies' allowances are decreased based on information those companies submitted after the March 6 rule. In addition, the adjustments prevent recipients of certain allowances from inappropriately using them for emissive purposes and provide for reports required by the Montreal Protocol Secretariat. The public interest is best served by making these changes, and the companies affected are either benefitted by the rule or are not adversely affected to a significant or unexpected degree. Several companies allowances are decreased by large amounts, but those companies made EPA aware that they had been granted too many allowances. Companies affected by the rule would find it difficult to comply with its provisions for the 1991 control period if those provisions were not promulgated until later in the control period. Thus the direct promulgation of this amendment is in the public interest because it will ensure that the provisions of title VI of the Clean Air Act as amended in 1990 are correctly implemented for 1991.

EPA believes that it is necessary to have a January 1, 1991 effective date for the same reasons that were stated in the March 6, 1991 temporary final rule. EPA selected that date because section 604(a) specifies that the currently applicable production limit takes effect on January 1, 1991. The Agency believes that the retroactive effect of this amendment will not adversely affect any member of the regulated community. Most of the revisions to the 1989 baseline result in additional allowances for companies whose documentation was not completed until after the deadline for the promulgation of the temporary final rule. According to EPA records, it is extremely unlikely that any company could have exceeded its actual baseline allowances on the basis of the amounts allocated in the temporary final rule. Finally, the regulations must take effect on January 1, 1991 for them to be meaningful, as the

production and consumption limits are on a control period basis, in this case from January 1, 1991 through December 31, 1991. The baseline allocations are valid for a control period, and making them effective for only part of the year would conflict with the rest of the provisions of the stratospheric ozone protection regulations.

EPA finds that these reasons constitute good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary. This action will be retroactive to January 1, 1991 unless adverse or critical comments in reference to the revised baseline allowances are received by January 29, 1992. The Agency views this as a noncontroversial amendment and anticipates no adverse comments. If such comments are received, the portion of this action objected to will be withdrawn through the publication of a **Federal Register** notice. If any portion of this action is withdrawn, it will be included in a notice of proposed rulemaking and a comment period will be established. If no such comments are received, the public is advised that this action will be effective as of January 1, 1991.

F. Additional Information

1. Executive Order (E.O.) 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic industries; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA determined that its March 6, 1991 temporary final rule did not meet the definition of a major rule under E.O. 12291, and therefore did not prepare a regulatory impact analysis (RIA). Since this technical amendment only supplements the temporary final rule and does not impose any additional burdens, no RIA would need to be prepared for this action either.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that federal agencies examine the impacts of their regulations on small entities. Under 5

U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 604(b). EPA determined that no RFA was necessary for the temporary final rule, and so no RFA would be required for this amendment either.

3. Paperwork Reduction Act

The information collection required in this rule has been previously approved in the information collection request entitled Record-Keeping and Periodic Reporting of the Production, Import, Export and Feedstock-Use of Ozone-Depleting Substances, under OMB Control Number 2060-0170, including the end-of-year export reports of Group I substances.

Dated: December 13, 1991.

William Reilly,
Administrator.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 is revised to read as follows:

Authority: 42 U.S.C. 7671-7671q.

2. In § 82.4, a new paragraph (e) is added to read as follows:

§ 82.4 Prohibitions.

* * * * *

(e) Any person that receives a quantity of production or consumption allowances under § 82.9(e) must hold the same quantity of unexpended production or consumption allowances on December 31, 1991. Every kilogram by which the person's unexpended production or consumption allowances falls short of the amount the person was originally granted under § 82.9(e) constitutes a separate violation.

3. In § 82.5, paragraphs (c), (d), and (e) are revised to read as follows:

§ 82.5 Apportionment of baseline production allowances.

* * * * *

(c) For Group III controlled substances:

Person	Calculated level (kg)
Allied-Signal, Inc.	127125
Atochem North America	3992
E.I. DuPont de Nemours & Co.	359471
Great Lakes Chemical Corp.	56381
Laroche Chemicals	29055

(d) For Group IV controlled substances:

Person	Calculated level (kg)
Akzo Chemicals, Inc.	11350207
Degussa Corporation	29405
Dow Chemical Company, USA	27098146
E.I. DuPont de Nemours & Co.	10077
Hanlin Chemicals-WV, Inc.	245368
ICI Americas, Inc.	945452
Occidental Chemical Corp.	921302
Vulcan Chemicals	22089550

(e) For Group V controlled substances:

Person	Calculated level (kg)
Dow Chemical Company, USA	16806939
PPG Industries, Inc.	5746415
Vulcan Chemicals	8971002

4. In § 82.6, paragraphs (c), (d), and (e) are revised to read as follows:

§ 82.6 Apportionment of baseline consumption allowances.

(c) For Group III controlled substances:

Person	Calculated level (kg)
Allied-Signal, Inc.	127125
Atochem North America	3983
E.I. DuPont de Nemours & Co.	329186
Great Lakes Chemical Corp.	56112
ICI Americas, Inc.	5844
Laroche Chemicals	28960
National Refrigerants	16626
Sumitomo Corporation of America	5912
TG (USA)	9254

(d) For Group IV controlled substances:

Person	Calculated level (kg)
Crescent Chemical	131
Degussa Corporation	29405
Dow Chemical Company, USA	32496490
E.I. DuPont de Nemours & Co.	62052
Hanlin Chemicals-WV, Inc.	244669
Hoechst-Celanese	7
ICI Americas, Inc.	2004430
Occidental Chemical Corp.	919178
Sumitomo Corporation of America	22

(e) For Group V controlled substances:

Person	Calculated level (kg)
3V Chemical Corp.	354
Actex, Inc.	5030
Atochem North America	7454
Dow Chemical Company, USA	12599654
IBM	203
ICI Americas	1421574
Laidlaw	42142
PPG Industries, Inc.	4538256
Sumitomo Corporation of America	196
TG (USA)	709
Unitor Ships Service, Inc.	1478
Vulcan Chemicals	7096589

5. In § 82.13, paragraph (h) is revised to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(h) For any exports of controlled substances not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties) or under this section, the exporter who exported the controlled substances must submit to the Administrator the following information within 45 days of the end of the control period in which the unreported exports left the United States. For any exports of controlled substances in Group I from July 1, 1990 through June 30, 1991 which were not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties), the exporter who exported the controlled substances must submit to the Administrator the following information within 30 days of the promulgation of this notice.

6. Part 82 is amended by removing appendices A, B, D and E, redesignating appendix C as appendix D and adding new appendices A, B, C and E to read as follows:

Appendix A—Class I Controlled Substances

Controlled substance	Ozone depletion weight
A. Group I:	
CFCl ₃ —Trichlorofluoromethane (CFC-11)	1.0
CCl ₂ F ₂ —Dichlorodifluoromethane (CFC-12)	1.0
CCl ₃ F—CClF ₂ —Trichlorotrifluoroethane (CFC-113)	0.8
CF ₃ Cl—CClF ₂ —Dichlorotetrafluoroethane (CFC-114)	1.0
CClF ₂ —CF ₃ —(Monochloropentafluoroethane (CFC-115))	0.6
All isomers of the above chemicals	
B. Group II:	
CF ₃ BrCl—Bromochlorodifluoromethane (halon 1211)	3.0
CF ₃ Br—Bromotrifluoromethane (halon 1301)	10.0

Controlled substance	Ozone depletion weight
C ₂ F ₄ Br ₂ —Dibromotetrafluoroethane (halon 2402)	6.0
All isomers of the above chemicals	
C. Group III:	
CF ₃ Cl—Chlorotrifluoromethane (CFC-13)	1.0
C ₂ F ₃ Cl ₃ —(CFC-111)	1.0
C ₂ F ₃ Cl ₂ —(CFC-112)	1.0
C ₂ F ₃ Cl—(CFC-211)	1.0
C ₂ F ₃ Cl ₂ —(CFC-212)	1.0
C ₂ F ₃ Cl ₃ —(CFC-213)	1.0
C ₂ F ₃ Cl ₂ —(CFC-214)	1.0
C ₂ F ₃ Cl ₃ —(CFC-215)	1.0
C ₂ F ₃ Cl ₂ —(CFC-216)	1.0
C ₂ F ₃ Cl—(CFC-217)	1.0
All isomers of the above chemicals	
D. Group IV:	
CCl ₄ —Carbon Tetrachloride	1.1
E. Group V:	
C ₂ H ₅ Cl ₃ —1,1,1-Trichloroethane (Methyl chloroform)	1

Appendix B—Class II Controlled Substances

Controlled substance	Ozone depletion weight
CHFCl ₂ —Dichlorofluoromethane (HCFC-21)	[res.]
CHF ₂ Cl—Chlorodifluoromethane (HCFC-22)	0.05
CH ₂ FCI—Chlorofluoromethane (HCFC-31)	[res.]
C ₂ HFCI ₃ —(HCFC-121)	[res.]
C ₂ HFCI ₂ Cl ₂ —(HCFC-122)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-123)	0.02
C ₂ H ₂ F ₂ Cl—(HCFC-124)	0.02
C ₂ H ₂ FCl ₃ —(HCFC-131)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-132b)	[res.]
C ₂ H ₂ F ₂ Cl—(HCFC-133a)	[res.]
C ₂ H ₂ FCl ₃ —(HCFC-141b)	0.12
C ₂ H ₂ F ₂ Cl—(HCFC-142b)	0.06
C ₂ HFCI ₃ —(HCFC-221)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-222)	[res.]
C ₂ H ₂ F ₂ Cl—(HCFC-223)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-224)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-225ca)	[res.]
(HCFC-225cb)	[res.]
C ₂ H ₂ F ₂ Cl—(HCFC-226)	[res.]
C ₂ H ₂ FCl ₃ —(HCFC-231)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-232)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-233)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-234)	[res.]
C ₂ H ₂ F ₂ Cl—(HCFC-235)	[res.]
C ₂ H ₂ FCl ₃ —(HCFC-241)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-242)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-243)	[res.]
C ₂ H ₂ F ₂ Cl—(HCFC-244)	[res.]
C ₂ H ₂ FCl ₃ —(HCFC-251)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-252)	[res.]
C ₂ H ₂ F ₂ Cl—(HCFC-253)	[res.]
C ₂ H ₂ FCl ₃ —(HCFC-261)	[res.]
C ₂ H ₂ F ₂ Cl ₂ —(HCFC-262)	[res.]
C ₂ H ₂ FCl—(HCFC-271)	[res.]
All isomers of the above chemicals	[res.]

Appendix C—Parties to the Montreal Protocol

Parties to the Montreal Protocol: Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Bulgaria (February 18, 1991), Burkina Faso, Byelorussian Soviet Socialist

Republic, Cameroon, Canada, Chile, China (September 12, 1991), Costa Rica (October 28, 1991), Czechoslovakia, Denmark, Ecuador, Egypt, European Economic Community, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, Iran, Ireland, Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Malawi (April 9, 1991), Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Philippines (October 15, 1991), Poland, Portugal, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Togo (May 26, 1991), Tunisia, Turkey (December 19,

1991), Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom, United States of America, Uruguay (April 8, 1991), Venezuela, Yugoslavia (April 3, 1991), Zambia.

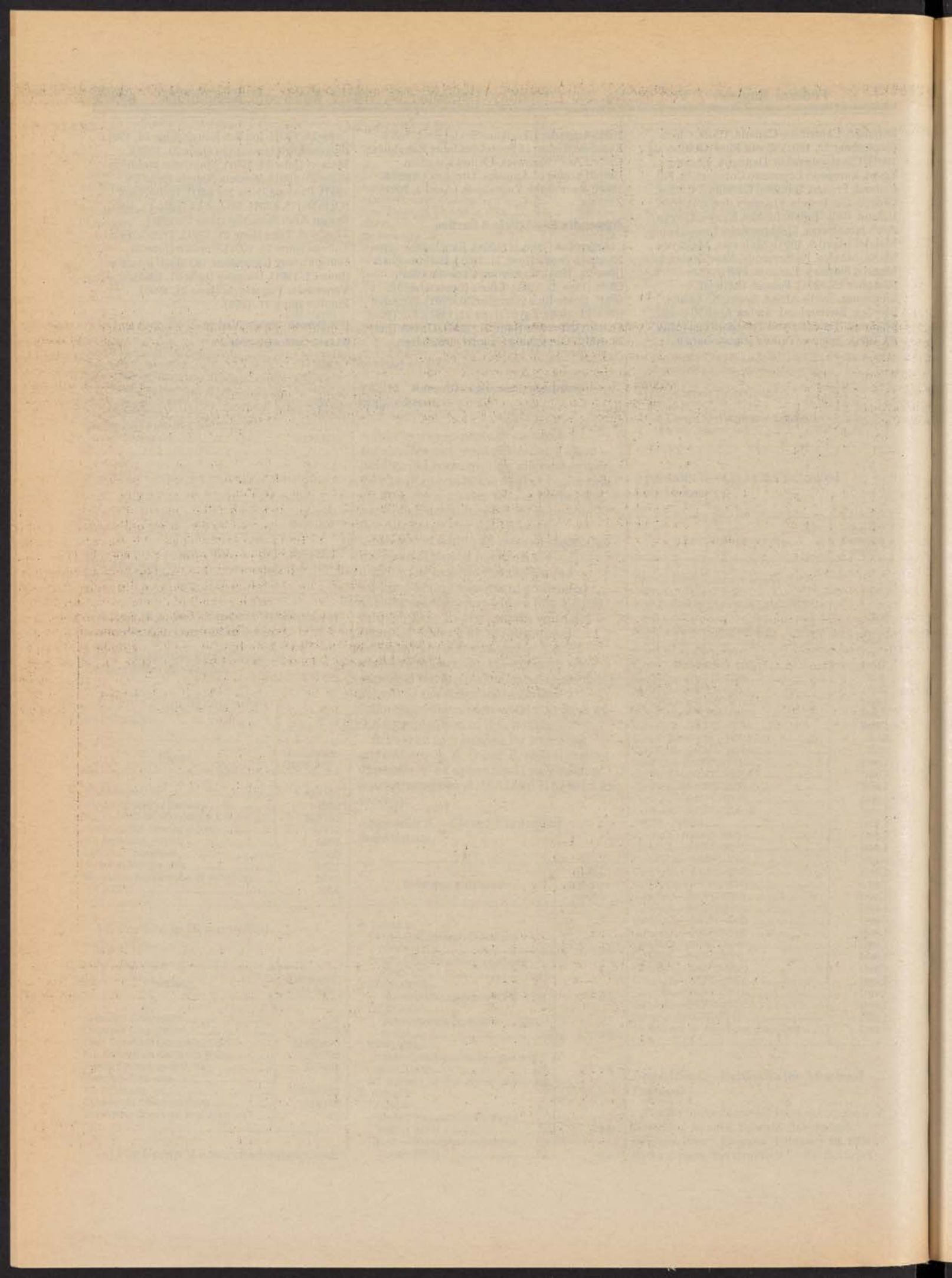
Appendix E—Article 5 Parties

Argentina (June 21, 1991), Bangladesh (June 21, 1991), Brazil (June 21, 1991), Burkina Faso (June 21, 1991), Cameroon (June 21, 1991), Chile (June 21, 1991), China (September 12, 1991), Costa Rica (October 28, 1991), Ecuador (June 21, 1991), Egypt (June 21, 1991), Fiji (June 21, 1991), Gambia (June 21, 1991), Ghana (June 21, 1991), Guatemala (June 21, 1991), Iran

(June 21, 1991), Jordan, Kenya (June 21, 1991), Libyan Arab Jamahiriya (June 21, 1991), Malawi (June 21, 1991), Malaysia, Maldives (June 21, 1991), Mexico, Nigeria (June 21, 1991), Panama (June 21, 1991), Philippines (October 15, 1991), Sri Lanka (June 21, 1991), Syrian Arab Republic (June 21, 1991), Thailand, Togo (June 21, 1991), Trinidad and Tobago (June 21, 1991), Tunisia (June 21, 1991), Turkey (December 19, 1991), Uganda (June 21, 1991), Uruguay (June 21, 1991), Venezuela, Yugoslavia (June 21, 1991), Zambia (June 21, 1991).

[FR Doc. 91-30968 Filed 12-27-91; 8:45 am]

BILLING CODE 6580-50-M



Test Report

Monday
December 30, 1991

Part IV

Department of Education

**Pell Grant Program; Deadline Dates for
Receipt of Reports and Other Documents
for the 1990-91 Award Year; Notice**

DEPARTMENT OF EDUCATION

Pell Grant Program; Deadline Dates for Receipt of Reports and Other Documents for the 1990-91 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline dates for the receipt of documents from institutions participating in the Pell Grant Program during the 1990-91 award year.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. Authority for the Pell Grant Program is contained in sections 411 through 411F of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a through 1070a-6. The regulations for the Pell Grant Program are codified in 34 CFR part 690 and 34 CFR part 668.

This notice announces the reports and information that institutions are required by 34 CFR 690.83(b) to submit to the Secretary, establishes the deadlines for submission of that information, and explains the manner in which the Secretary interprets and applies the requirements of 34 CFR 690.83(a) to requests by institutions for adjustments to their Pell Grant accounts with regard to Student Aid Report (SAR) Payment Vouchers (Part 3 of the SAR) submitted after the December 31 deadline established under § 690.83(a).

I. Submissions to the Secretary of Institutional Payment Summary and Student Aid Reports

Each institution that participates in the Pell Grant Program is required by 34 CFR 690.83(b) to submit to the Secretary reports and information required in connection with the Pell Grant funds made available to the institution for an award year. These required reports include the Institutional Payment Summary (IPS). Ordinarily, the Secretary provides an IPS form to the institution for completion and return to the Department.

The institution may also meet this reporting requirement by submitting the IPS information to the Department on a floppy disk, magnetic tape, or by an electronic transmission from a personal or mainframe computer through a modem. These are referred to, respectively, as the Pell Grant Floppy Disk Data Exchange, the Pell Grant Recipient Data Exchange (RDE), and the Electronic Data Exchange (EDE) Stage III. An institution that wishes to transmit

by one of these three methods must enter into a written agreement with the Department and must agree to comply with the manner of formatting and presenting the information submitted as prescribed by the Department, to restrict access to the records from which the IPS information is derived, and to ensure that only authorized officials or agents of the institution may enter the data transmitted in or with the IPS submission to the Department.

The Department credits an institution's Pell Grant account on the basis of data submitted through the system described in this notice in a timely, certified, and acceptable form. A submission is timely if received by the Department by the deadlines prescribed in the table in part I. C. of this notice; certified, if its accuracy is attested to by the institution in the manner described in part I. D. of this notice; and acceptable if submitted in accordance with the directions provided by the Department for the particular medium of submission used by the institution.

Failure to meet these reporting requirements may result in administrative action by the Department under subpart G of 34 CFR part 668 to fine the institution, or to limit or terminate its participation in the Pell Grant Program. In addition, failure to accurately report a student's full award amount by the reporting deadline may render the student ineligible for all or part of his or her Pell Grant disbursement.

A. Data and Records to be Submitted

In each IPS submission, the institution must submit the following:

(1) On the IPS, or in the IPS format, the institution must provide information described in Section II of the IPS, including, in particular, the number and amount of Pell Grant awards to its students affected by events or transactions that take place and the institution's total payments to all Pell Grant recipients for the award year, generally, up to the date of the submission; and

(2) A SAR Payment Voucher (Part 3 of the SAR), or its equivalent as defined by the Secretary, that discloses—

(i) Any new Pell Grant recipients identified by the institution during the period in which the IPS is submitted; or

(ii) Any change in enrollment status, cost of attendance, or other event that occurred during either the period in which the IPS is submitted or the period immediately preceding that period, if that event causes a change in the amount of Pell Grant that a student has received or qualifies to receive for the award year.

The institution may submit the IPS without SAR Payment Vouchers or equivalents if the institution had no Pell Grant recipients in attendance, or identified no new Pell Grant recipients during the period in which the report is made, and did not identify any events affecting the awards of previously-reported recipients during the reporting period preceding the period in which the IPS is submitted. If an institution that transmits IPS information via the floppy disk, RDE, or EDE Stage III wishes to exercise this option, it must use the paper document.

(Approved by the Office of Management and Budget under OMB Control Numbers 1840-0132 (SAR) and 1840-0540 (IPS))

B. Addresses for Delivery

The institution must deliver the IPS and any accompanying SAR Payment Vouchers, or the floppy disk or magnetic tape containing this information, as follows:

If by regular mail: U.S. Department of Education, Pell Grant Branch, DPOS, P.O. Box 4158, Iowa City, Iowa 52244-4158.

If delivered by a courier other than U.S. Postal Service: U.S. Department of Education, Pell Grant Branch, DPOS, c/o National Computer Systems, 2510 N. Dodge St., Iowa City, Iowa 52240, Attention: GPS/DP.

C. Frequency and Schedules for IPS Submissions

The institution must make an IPS submission or its equivalent at least once during each of the reporting periods established in the following tables that apply to institutions with Pell Grant authorizations comparable to that of the reporting institution. The institution may make IPS submissions more frequently, up to 60 times in the entire reporting cycle (July 1st through the final reporting deadline). For purposes of complying with the reporting requirements of section I, an institution must ensure that the IPS and SAR Payment Vouchers are received by the Department by the applicable closing date for each reporting period specified in the applicable table of this notice; proof of mailing such as a dated U.S. Postal Service postmark is not considered confirmation of receipt by the Department. If the institution submits the IPS and SAR Payment Voucher information by means of the Electronic Data Exchange Stage III, the transmission must be received at the Department of Education's Central Processing System facility by midnight (Central Time) of the applicable closing date for the reporting periods indicated.

in tables A and B.

TABLE A.—INSTITUTIONS WITH A 1989-90 PELL GRANT AUTHORIZATION OF AT LEAST \$750,000

Reporting periods	Closing date for receipt
July 1, 1990 through Oct. 15, 1990.	Oct. 15, 1990
Oct. 16, 1990 through Dec. 15, 1990.	Dec. 15, 1990
Dec. 16, 1990 through Feb. 15, 1991.	Feb. 15, 1990
Feb. 16, 1991 through Apr. 15, 1991.	Apr. 15, 1991
Apr. 16, 1991 through June 15, 1991.	June 15, 1991
June 16, 1991 through Aug. 15, 1991.	Aug. 15, 1991

TABLE B.—INSTITUTIONS WITH A 1989-90 PELL GRANT AUTHORIZATION OF LESS THAN \$750,000

Reporting periods	Closing date for receipt
July 1, 1990 through Dec. 15, 1990.	Dec. 15, 1990
Dec. 16, 1990 through Apr. 15, 1991.	Apr. 15, 1991
Apr. 16, 1991 through Aug. 15, 1991.	Aug. 15, 1991

D. Certification of accuracy

The institution must certify the accuracy of the IPS submission, and must include with each IPS submission a certification to that accuracy. An institution transmitting an IPS must certify by including an original signed certification by the official of the institution accountable for the accuracy of the date submitted. An institution transmitting IPS information in a disk, magnetic tape, or electronic transmission must certify by including in that transmission the code or signature flag prescribed by the Department with which the institution signifies that the transmitted information has been provided from a file or record to which only officials with appropriate security clearance have access.

II. Annual Deadline for Submission of SAR Payment Vouchers and Requests for Adjustments of Pell Grant Accounts

Under the reporting system established under the regulations and described here, an institution obtains an adjustment in its Pell Grant account, and the amount of Pell Grant funds for which it is accountable, by submitting supporting SAR Payment Vouchers or equivalents under the procedures described in this notice. An institution is required by 34 CFR 690.83(a) to submit

all SAR Payment Vouchers for an award year by a specified date following that award year; for 1990-91 and prior years, that date is the December 31 following the end of the award year. The institution may therefore submit any Payment Vouchers not previously submitted during the required reporting periods established in this notice by that annual deadline date, and receive an adjustment in its Pell Grant authorization on the basis of that submission. After December 31, the Secretary closes out the institution's Pell Grant account for the award year on the basis of information reported by the institution through submission of the IPS and supporting SAR Payment Vouchers through that date. The final IPS submitted by the institution must accurately report the institution's total payments to all Pell Grant recipients for the completed award year (IPS Item 15 or equivalent).

A. Timely Delivery for Final Submissions of SAR Payment Vouchers and Requests for Adjustments of Pell Grant Accounts: Proof of Delivery.

An institution may be required by the Department to show that it mailed or otherwise submitted its IPS and SAR Payment Vouchers by the December 31 deadline date.

The Department accepts as proof of the date of delivery by mail or by non-Postal Service courier one of the following:

- (i) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (ii) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

- (iii) A dated shipping label, invoice, or receipt from a commercial courier.
- (iv) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts hand-delivery at the address stated earlier between 8 a.m. and 4:30 p.m. Central Time on days other than Saturday, Sunday, or Federal holidays.

An institution that transmits IPS and SAR Payment Document information via the Electronic Data Exchange Stage III must ensure that its transmission is completed by midnight of the December 31 deadline date.

The Secretary regards 34 CFR 690.83(a) as intended to cause a timely closeout of the institution's account for

the award year by closing the Pell Grant account of the institution solely on the basis of SAR Payment Vouchers or equivalents delivered to the Department by the annual deadline date, unless the closure would result in certain inaccuracies in the measurement of an institution's management of its Pell Grant authorization. Through the various notices published regarding the submission of this data, the Secretary has interpreted § 690.83(a) to recognize a very limited number of exceptions to the closing of the Pell Grant account on the deadline date.

B. Post-deadline Adjustments to Pell Grant Accounts

In final regulations published November 6, 1991, the Secretary amended 34 CFR 690.83(a) to change the annual deadline date from December 31 to September 30. That change applies to the 1991-92 award year and subsequent award years, but the interpretation included in the responses to comments applies to the intent and operation of the current version of § 690.83(a) as it applies to 1990-91 submissions (see 56 FR 56915, Nov. 6, 1991). As explained there, the Secretary interprets § 690.83(a) to permit a post-December 31 adjustment to the Pell Grant account of an institution for the 1990-91 award year or any prior award year in these two circumstances:

(1) Underpayment of Previously Reported Awards

If the institution timely submitted a SAR Payment Voucher or equivalent for a student in accordance with requirements of this notice and § 690.83(a), but did not timely submit, in an acceptable form, a SAR Payment Voucher necessary to document the full amount of the award to which that student is entitled, the institution may receive a payment or reduction in accountability in the full amount of that award, if—

- (i) The underpayment for that award is or would be at least \$100, and
- (ii) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Voucher timely submitted to, and accepted by the Secretary.

(2) Overawards of Previously Reported Grants

At any time that the institution determines that a student on whose Pell Grant it had previously reported

received more than the amount of Pell Grant funds for which the individual qualified, the institution may report the reduction to the proper amount. The institution should not make such a report, however, for an overaward for which it is not liable under § 690.79(a).

The Secretary, in addition, makes allowance for its own administrative errors where the institution demonstrates that its failure to timely submit SARs and have them accepted was caused by a processing or administrative error made by the Department or one of its contractors.

The Secretary does not adjust the Pell Grant account of an institution on the basis of submissions made after December 31 following the award year except in these specified circumstances. Thus, if an institution submits to the Department after the December 31 deadline, SAR Payment Vouchers or equivalents for the 1990-91 award year, the institution will not receive either added Pell Grant funds or a reduction in the amount of Pell Grant funds previously received from the Department for which it is accountable unless it demonstrates that one of these conditions exists. If the institution does not so demonstrate to the satisfaction of the Secretary, the institution, with respect to the amount not timely reported, will receive no additional funds for that grant, no reimbursement if the grant was already made using institutional funds, and will remain

liable for those Federal funds received in advance that it used for that grant.

Moreover, if the institution was required by § 690.79(a) to use institutional funds for Pell Grants to compensate for overawards for which it was accountable, the Secretary takes those required reimbursements into account in determining whether the institution qualifies for added funds under the first exception described here.

If an institution believes that an adjustment is warranted on the basis of the conditions described here, it should contact the Pell Grant Program Financial Management Section at (202) 708-9807. If the institution seeks relief on the basis of administrative error by the Department or its contractor, that request must provide a complete description of all facts pertaining to the awards not credited, including identifying data and full payment history. The request must be received by the Department no later than March 31, 1992. The request must be delivered to: U.S. Department of Education, Pell Grant Branch, DPOS, P.O. Box 23791, Washington, DC 20026-0791.

C. Request for Duplicate Payment Vouchers or Related Information

An institution that wishes to receive a duplicate Payment Voucher, Processed Payment Voucher, or processed payment data, may do so by contacting a Pell Grant Program Financial Management Specialist in writing at: U.S. Department of Education, Pell

Grant Branch, DPOS, P.O. Box 23791, Washington, DC 20026-0791

In order to receive a duplicate Payment Voucher the institution must include with its request a photocopy of either Part 1 or Part 2 of that student's SAR, or a photocopy of that student's Electronic Student Aid Report (ESAR).

APPLICABLE REGULATIONS: The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR part 690 and the Student Assistance General Provisions regulations in 34 CFR part 668.

FOR FURTHER INFORMATION CONTACT: Jennifer Radden, Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue SW. (ROB-3, room 4318), Washington, DC 20202. Telephone (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1 (800) 877-8339 (in Washington, DC (202) 708-9300) between 8 a.m. and 7 p.m., Eastern time. (20 U.S.C. 1070a).

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program).

Dated: December 23, 1991.

Carolynn Reid-Wallace,
Assistant Secretary for Postsecondary Education.

[FR Doc. 91-31076 Filed 12-27-91; 8:45 am]

BILLING CODE 4000-01-M

Register

Monday
December 30, 1991

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Notice Inviting Applications for New Awards Under the Training Personnel for the Education of Individuals With Disabilities—Grants for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No. 84.029C]

Office of Special Education and Rehabilitative Services

Notice Inviting Applications for New Awards Under the Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training for Fiscal Year 1992

NOTE TO APPLICANTS: This notice is a complete application package. The notice contains information, application forms and instructions needed to apply for a grant under this competition.

The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

PURPOSE OF PROGRAM: The Individuals with Disabilities Education Act (IDEA) Amendments of 1991, Public Law 102-119 establishes a new personnel preparation program for projects supporting personnel development partnerships.

SUPPLEMENTARY INFORMATION: This program complements AMERICA 2000, the President's strategy for moving the Nation toward the achievement of the six National Education Goals. By strengthening the quality of personnel training for individuals in the fields of special education, related services, and early intervention services, this program will help individuals with disabilities reach the high levels of educational performance envisioned by the National Education Goals.

ELIGIBLE APPLICANTS: States and other public and private entities are eligible under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: April 1, 1992.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: June 29, 1992.

APPLICATIONS AVAILABLE: December 27, 1991.

AVAILABLE FUNDS: \$1,500,000.

ESTIMATED RANGE OF AWARDS: \$250,000 to \$350,000.

ESTIMATED AVERAGE SIZE OF AWARDS: \$300,000.

ESTIMATED NUMBER OF AWARDS: 5.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions

of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in part 318—Training Personnel for the Education of Individuals with Disabilities—Personnel Preparation Grants. See 56 FR 57198-57204, November 7, 1991.

PRIORITIES: Under 34 CFR 75.105(c)(3) and Section 631(c) of the IDEA the Secretary gives an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet the absolute priorities in this notice.

The Secretary will make up to 5, 60-month awards for support of personnel development partnerships.

Priority—Personnel Development Partnerships

This priority supports the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement or competency-based training, including but not limited to, certificate or degree granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. The purposes for which such a grant may be expended include, but are not limited to, the following:

(1) Establishing a program with colleges and universities to develop creative new programs and coursework options or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

(2) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and

voluntary sector workers who have demonstrated a commitment to working in the above fields and who are enrolled in higher education institution programs relating to these fields.

(3) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in the above fields.

(4) Identifying existing public and private agency and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time and tuition reimbursement.

Selection Criteria

The Secretary is using the selection criteria in 34 CFR 318.22 to select grantees under this competition. The Secretary awards up to 100 points for these criteria. The maximum possible score for each criterion is indicated in parentheses.

(a) Impact on Critical Present and Projected Need. (30 points)

The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personnel needs to be addressed to the provision of special education, related services, and early intervention. Significance of need identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted speciality or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence

that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) Capacity of the Institution (25 points)

The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability;

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State designated lead agency under Part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) Plan of Operation (25 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) Evaluation Plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) Budget and Cost-Effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(Authority: 20 U.S.C. 318 (c))

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.029C), Washington, DC 20202-4725.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC, time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.029C), room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of

application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on September 17, 1990 (55 FR 38210 and 38211).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.029C, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, D.C. 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Application Instructions and forms

The appendix to this application is divided into three sections plus a section on common questions and answers, a statement regarding estimated public reporting burden, and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted applications should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

Note: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

Authority: 20 U.S.C. 1410.

Dated: December 23, 1991.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section.

Common Questions and Answers

While we have always made every effort to make our application materials as clear and complete as possible, a major task of Division of Personnel Preparation staff from the date of the program announcement to the closing date in answering phone and mail requests with further questions. The next several pages list some of the most common issues raised by potential applicants in interpreting our regulations and application instructions.

The following issues are not hypothetical. They represent concerns repeatedly raised, even though in many cases they are answered in the regulations or application instructions. The problem seems to be that the issues are not sufficiently highlighted, or that they are disguised by the formal language of legislative documents. These issues and general responses are listed in approximately the frequency of occurrence.

• Extension of Deadlines

Waivers for individual applications are not granted, regardless of the circumstances. Under very extraordinary circumstances a closing date may be changed. Such changes are announced in the *Federal Register* and apply to all applications.

• Copies of the Application

Current Government-wide policy is that only an original and two copies need to be submitted. Division staff duplicate the two additional copies necessary to complete the review process by staff and peer readers. It is not required that applications be bound, though they may be if you wish. However, to facilitate our reproduction, please leave one copy unbound. Also, please do not use colored paper, foldouts, photographs, or other hard to duplicate materials. Some applicants prefer to make their own additional copies. If you do so, there is no need to submit more than two additional copies, as that is all that will be required for the review process.

• Help Preparing Applications

We are happy to provide general program information. Clearly it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about our application requirements and evaluation criteria, or about the announced priority. Applicants should understand that such previous contact is not required, nor does it guarantee the success of an application.

• Notification of Funding

The time required to complete the evaluation of applications is extremely variable. Once applications have been received staff must determine the areas of expertise needed to appropriately evaluate the applications, identify and contact potential reviewers, convene peer review panels, and summarize and review the recommendations of the review panels. You can expect to receive notification within 3 to 6 months of the application closing date. The requested start date should therefore be a minimum of 3 months after the closing date.

• Possibility of Learning the Outcome of Review Panels Prior to Official Notification

Every year we are called by a number of applicants who have really legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, etc. Regardless of the reason, we cannot share information about the review with anyone prior to officially completing the review process for a competition, nor can we tell you when you will be notified. *Please* do not call us and ask us for this information. You will be notified as quickly as possible either by a grant negotiator (if your application is recommended for funding) or through a letter to the certifying representative (if your application is not successful).

• Length of Application

The Department of Education is making a concerted effort to reduce the volume of paper work in applications to discretionary grant programs. The following suggestions should assist applicants to prepare applications which will convey the information necessary for the review and selection process, and also save America's forests, professional time and energy. The scope and complexity of projects are too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the importance and impact of the project as well as to make knowledgeable judgments about the methods you propose to use (design, subjects, sampling procedures, measures, instruments, data analysis strategies, etc.). Many applications include voluminous appended material. In most cases this material is not useful in the evaluation process. Very few projects require much supporting material. However, it is often helpful to have:

(1) *Staff Vitae*—when these include each person's title and role in the proposed project and contain *only* information that is relevant to this proposed project's activities and/or publications. Vitae for consultants and Advisory Council members should be similarly brief.

(2) *Instruments*—except in the case of generally available and well known instruments.

(3) *Agreements*—when the participation of an agency other than the applicant is critical to the project. This is particularly critical when an intervention will be implemented within an agency, or when subjects will be drawn from particular agencies. Letters of cooperation should be specific, indicating agreement to implement a particular intervention or to provide access to a particular group. General letters of support are *not* useful.

Except for the three items noted above, most appendix material is rarely useful. Typical extraneous materials include:

- (1) Related project descriptions completed by applicant
- (2) Maps
- (3) State plans
- (4) Brochures
- (5) Copies of publications

• Use of Person Loading Charts

Program officials and applicants often find person loading charts useful formats for showing project personnel and their time commitments to individual activities. A person loading chart is a tabular representation of major activities by number of days spent by each person involved in each activity, as shown in the following example.

TABLE #
[Person Loading Chart]

Activity	Time in Day(s) by Person*			
	Person A	Person B	Person C	Person D
Program Development	15	20	0	0
Mentoring	0	0	0	5
Research	5	25	0	0
Information Services	0	2	0	0
Dissemination (manuscripts, etc.)	0	1	20	10

* Note: All figures represent FTE for the academic year.

• Return of Non-Funded Applications

Because of budget restrictions, we are no longer able to return original copies of applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to all applicants.

• Delivering/Sending Applications to the Competition Manager

Applications can be mailed or hand delivered, but in either case *must* go the Application Control Center at the address listed in the Mailing Instructions in this packet. Delivering/sending the application to the competition manager in the program office may prevent it from being logged in on time to the appropriate competition.

• Format for Applications

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to be sure that reviewers are able to find all relevant information.

• Allowed Travel Under These Projects

Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Travel to conferences is the travel item that is most likely to be questioned during negotiations. Such travel is sometimes allowed when it is for purposes of dissemination, when there will be results to be disseminated, and when it is clear that a conference presentation or workshop is an effective way of reaching a particular target group.

• Funding of Approved Applications

It is often the case that the number of applications recommended for approval by the reviewers exceeds the dollars available for funding projects under a particular competition. When the panel reviews are completed for a particular competition, the individual reviewer scores and applications are ranked. The higher ranked, approved applications are funded first, and there are often lower ranked, approved applications that do not receive funding. Sometimes the one or two applications that are approved and fall next in rank order (after the projects selected for funding) are placed on hold. If dollars are freed up during negotiations or if a higher ranked applicant declines the award, the projects on hold may receive funding. If you receive a letter stating

that you will not receive funding then your project has neither been selected for funding nor placed on hold.

• Issues Raised During Negotiations

During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review. Generally, technical issues are minor issues that require clarification. Alternative approaches may be presented for your consideration, or you may be asked to provide additional information or rationale for something you have proposed to do. Sometimes issues are stated as "conditions". These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions are also raised about the proposed budget during the negotiation phase. Generally, budget issues are raised because there is inadequate justification or explanation of the particular budget item, or because the budget item does not seem important to the successful completion of the project. The grants negotiator will present the negotiation questions or issues to you and ask you to respond. If you do not understand the question, you should ask for clarification. In responding to negotiation items you should provide any additional information or clarification requested. You may feel that an issue was addressed in the application. It may not, however, have been explained in enough detail to make it understood by reviewers, and more information should be provided. If you are asked to make changes that you feel could seriously affect the project's success you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the activities you may want to explain why and provide additional justification for the proposed expenses. Your changes, explanations, and alternative suggestions will be carefully evaluated by staff. In some instances additional negotiations or

follow-up information may be needed. In such instances you will again be contacted by the grants negotiator. An award cannot be made until all negotiation issues have been resolved.

• Successful Applications and Estimated/Projected Budget Amounts In Subsequent Years

In this era of budget deficits and need for cost containment, a conservative policy toward current and out-year budget expenditures is necessary. Projects will not be funded in excess of the amount listed in the **Federal Register** announcement. Any project approved by the reviewers that exceeds the estimated size of award will be required to be performed within the announced amount. The budget estimates that you provide in your application for out-year costs are critical for planning purposes, but they in no way represent a commitment by the Department to a particular level of funding in subsequent years. Budget modifications during the negotiation process, the findings from the initial year, or needed changes in the research design can affect your budget requirements in subsequent years. However, keep in mind that multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level. Grantees having multi-year projects will be required to submit a continuation application and a detailed budget request prior to each year of the project.

• Difference Between a Cooperative Agreement and a Grant

A cooperative agreement is similar to a grant in that its principal purpose is to accomplish a public purpose of support or stimulation as authorized by a Federal statute. It differs from a grant in the sense that in a cooperative agreement substantial involvement is anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

• Obtaining Copies of the Federal Register, Program Regulations and Federal Statutes

Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238.

Application Narrative and Instructions

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria found elsewhere in this packet. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to ensure that reviewers are able to find all relevant information.

The following is a suggested format you may wish to use in preparing your application. This suggested format is advisory only, since the scope and complexity of projects is too variable to establish firm limits on length and format. In your application you may wish to include the following features in the order listed below:

- (a) An abstract of the project;
- (b) The extent the project meets the purposes of the authorizing statute;
- (c) The extent the project meets specific needs recognized in the statute that authorizes the program;
- (d) The plan of operation which the applicant proposes to use to administer the project;
- (e) The quality of key personnel to be used to achieve each objective;
- (f) Budget and cost effectiveness to achieve the proposed activity;
- (g) The evaluation plan to evaluate the project; and
- (h) The adequacy of resources available and needed to achieve each objective.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

**APPLICATION FOR
FEDERAL ASSISTANCE**

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED	Applicant Identifier																					
3. DATE RECEIVED BY STATE		State Application Identifier																						
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier																						
5. APPLICANT INFORMATION																								
Legal Name:		Organizational Unit																						
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):																						
6. EMPLOYER IDENTIFICATION NUMBER (EIN): <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px 0;"></div>		7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/> <div style="display: flex; justify-content: space-between; font-size: small;"> <div> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District </div> <div> H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____ </div> </div>																						
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		9. NAME OF FEDERAL AGENCY:																						
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px 0;"></div>		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:																						
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):																								
13. PROPOSED PROJECT: Start Date Ending Date		14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project																						
15. ESTIMATED FUNDING: <table border="1" style="width: 100%; border-collapse: collapse; font-size: small;"> <tr> <td style="width: 30%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%; text-align: right;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> </table>		a. Federal	\$.00	b. Applicant	\$.00	c. State	\$.00	d. Local	\$.00	e. Other	\$.00	f. Program Income	\$.00	g. TOTAL	\$.00	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
a. Federal	\$.00																						
b. Applicant	\$.00																						
c. State	\$.00																						
d. Local	\$.00																						
e. Other	\$.00																						
f. Program Income	\$.00																						
g. TOTAL	\$.00																						
17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No																								
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED																								
a. Typed Name of Authorized Representative		b. Title	c. Telephone number																					
d. Signature of Authorized Representative		e. Date Signed																						

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

BILLING CODE 4000-01-C

SF 424 (REV 4-88) Back

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invited comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 42

hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of the information, including suggestions for reducing this burden, to the U.S.

Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0028, Washington, DC 20503.

(Information collection approved under OMB Control number 1820-0028. Expiration date: 11/30/92.)

FILLING CODE 4000-01-36

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES					
Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	13. Federal	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Year)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach additional sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	FR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Approved by OMB
0348-0045

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0346-0046), Washington, D.C. 20503

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

ENCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

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Testis Great Federal Paper

**Monday
December 30, 1991**

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Budget Rescissions and Deferrals**

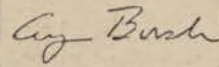
The White House, Washington
December 19, 1991

Dear Mr. Speaker: In accordance with the
Congressional Budget and Impoundment
Control Act of 1974, I herewith report three

new and two revised deferrals of budget
authority for FY 1992 now totaling
\$3,944,898,210.

These deferrals affect International
Security Assistance programs as well as
programs of the Agency for International
Development and the Departments of
Agriculture and State. The details of these
deferrals are contained in the attached
report.

Sincerely,



The Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, DC 20515

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE**(in thousands of dollars)**

<u>DEFERRAL NO.</u>	<u>ITEM</u>	<u>BUDGET AUTHORITY</u>
	Funds Appropriated to the President:	
	International Security Assistance:	
D92-1A	Economic support fund.....	1,868,089
D92-8	Foreign military financing.....	1,908,000
	Agency for International Development:	
	International disaster assistance,	
D92-9	Demobilization and transition fund.....	13,000
	Department of Agriculture:	
	Forest Service:	
D92-10	Expenses, brush disposal.....	101,006
	Department of State:	
	Bureau of Refugee Programs:	
D92-6A	United States emergency refugee and migration fund.....	54,803
	Total, deferrals.....	3,944,898

SUMMARY OF SPECIAL MESSAGE**FISCAL YEAR 1992****(in thousands of dollars)**

	<u>RESCISSIONS</u>	<u>DEFERRALS</u>
Second special message:		
New items.....	---	2,022,006
Revisions to previous special message.....	---	1,648,062
Effects of the second special message.....	---	3,670,068
Amounts from previous special message...	---	1,817,020
Total amount proposed to date in all special messages.....	---	5,487,088

Deferral No. D92-1A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D92-1 transmitted to Congress on September 30, 1991.

This revision increases by \$1,623,312,000 the previous deferral of \$244,777,065 in the Economic support fund, resulting in a total deferral of \$1,868,089,065. The increase results from a greater-than-anticipated level of unobligated funds being carried over from FY 1991, and funds made available through March 31, 1992, by P.L. 102-145, the second Continuing Resolution for FY 1992.

Deferral No. 92-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... * \$ <u>3,216,624,000</u>
BUREAU: International Security Assistance	(P.L. 102-145)
Appropriation title and symbol: Economic support fund <u>1/</u>	Other budgetary resources..... *\$ <u>-1,278,733,606</u>
112/31037	Total budgetary resources..... * <u>1,937,890,394</u>
111/21037	Amount to be deferred:
11X1037	Part of year..... * \$ <u>1,868,089,065 2/</u>
	Entire year..... _____
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013):
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1992</u> <u>September 30, 1993</u> (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11-1037-0-1-152	* 54,769,000
Economic support fund.....	111/21037	11-1037-0-1-152	205,008,065
Economic support fund.....	112/31037	11-1037-0-1-152	* 1,608,312,000
			* 1,868,089,065

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91-1C).

2/ This deferred amount has been reduced to \$1,243,865,045 due to subsequent releases.

* Revised from previous report.

Deferral No. 92-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... \$ <u>4,100,000,000</u> (P.L. 102-145)
BUREAU: International Security Assistance	Other budgetary resources..... <u>-2,050,000,000</u>
Appropriation title and symbol: Foreign military financing (FMF) 1/ 1121082	Total budgetary resources..... <u>2,050,000,000</u>
	Amount to be deferred:
	Part of year..... \$ <u>1,908,000,000</u>
	Entire year..... _____
OMB identification code: 11-1082-0-1-152	Legal authority (in addition to sec. 1013):
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by grant, credit, or guarantee articles and defense services to friendly countries to facilitate the common defense. Further, the President is authorized by the International Narcotics Control Act of 1989 to provide military and law enforcement assistance to counter illegal narcotics. Under Section 2 of the Arms Export Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit transactions that are based upon national security and financial policies. These funds have been deferred pending the approval of the Departments of State, Defense, and Treasury for the specific sales to eligible countries. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91-8).

Deferral No. 92-9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... _____
BUREAU: Agency for International Development	Other budgetary resources..... \$ <u>13,000,000</u>
Appropriation title and symbol: Demobilization and transition fund 11X1500	Total budgetary resources..... \$ <u>13,000,000</u>
	Amount to be deferred:
	Part of year..... \$ <u>13,000,000</u>
	Entire year..... _____
OMB identification code: 11-1500-0-1-152	Legal authority (in addition to sec. 1013):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This account was established to facilitate cease-fire monitoring, demobilization, and transition to peace. Funds were transferred into this account pursuant to P.L. 101-513, Section 531(f) (2). These funds are available solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador. Funds are available for obligation and expenditure only upon notification by the President to the Congress that the Government of El Salvador and representatives of the Farabundo Marti National Liberation Front (FMLN) have reached a permanent settlement of the conflict, including a final agreement on a cease-fire. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 92-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... \$ <u>36,421,000</u> (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... <u>109,604,985</u>
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources..... <u>146,025,985</u>
	Amount to be deferred: Part of year..... \$ _____
	Entire year..... <u>101,006,495 2/</u>
OMB identification code: 12-9922-0-2-302	Legal authority (in addition to sec. 1013):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit to the Forest Service the established cost for disposing of brush and other debris resulting from timber cutting operations by 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require \$73 million in 1992. The current fiscal year reserve of \$101 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91-2).

2/ This deferral amount has been reduced to \$72,627,985 due to subsequent releases.

Deferral No. D92-6A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D92-6 transmitted to Congress on September 30, 1991.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported as deferred from \$30,052,650 to \$54,802,650. This increase of \$24,750,000 reflects the funds made available through March 31, 1992, provided by P.L. 102-145, the second Continuing Resolution for FY 1992.

Deferral No. 92-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..... * \$ <u>49,500,000</u> (P.L. 102-145)
BUREAU: Bureau of Refugee Programs	Other budgetary resources..... * \$ <u>5,342,650</u>
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... * \$ <u>54,842,650</u>
OMB identification code: 11-0040-0-1-151	Amount to be deferred:
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Part of year..... * \$ <u>54,802,650</u>
	Entire year..... _____
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91-6B).

* Revised from previous report.

[FR Doc. 91-31072 Filed 12-27-91; 8:45 am]

BILLING CODE 3110-01-C

Federal Register

Monday
December 30, 1991

Part VII

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulations:
Miscellaneous Amendments; Increase in
Cost or Pricing Data Threshold; Removal
of Toshiba Sanctions; and Alternative
Dispute Resolution; Interim Rules and
Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-10]

Federal Acquisition Regulation;
Introduction of Miscellaneous
AmendmentsAGENCIES: Department of Defense
(DOD), General Services Administration(GSA), and National Aeronautics and
Space Administration (NASA).ACTION: Summary presentation of
interim rules with request for comment.SUMMARY: This document introduces the
documents set forth below which
comprise Federal Acquisition Circular
(FAC) 90-10. The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council are
issuing FAC 90-10 to amend the Federal
Acquisition Regulation (FAR) toimplement changes in the following
subject areas:

Item	Subject	FAR case	DAR case	Analyst
I.....	Increase in Cost or Pricing Data Threshold (Interim rule).....	91-53	90-303	Olson
II.....	Removal of Toshiba Sanctions.....	91-66	91-78	Rosinski
III.....	Alternative Dispute Resolution (Interim rule).....	91-62	90-323	O'Neill

DATES: For effective dates, see separate documents which follow. Please cite FAC 90-10 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: the analyst whose name appears in relation to each far case or subject area. For general information, contact the far secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-10 and far case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Increase in Cost or Pricing Data
Threshold (FAR Case 91-53)

This interim rule amends FAR subparts 14.2, 15.8, and 52.2 to increase the threshold for submission of certified cost or pricing data from \$100,000 to \$500,000 for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard pursuant to the requirements of section 803 of Public Law 101-510. The statutory threshold applicable to contracts awarded by other agencies remains at \$100,000.

Item II—Removal of Toshiba Sanctions
(FAR Case 91-66)

Subpart 25.10, Sanctions for Violations of Export Controls, the provision at 52.225-12, Notice of Restrictions on Contracting with

Sanctioned Persons, and the clause at 52.225-13, Restrictions on Contracting with Sanctioned Persons, are being deleted, in their entirety, from the regulation because the sanctions imposed by Executive Order 12661 dated December 27, 1988, expire on December 28, 1991. Therefore, the regulatory policy contained in the subpart, provision, and clause no longer applies.

Item III—Alternative Dispute Resolution
(FAR Case 91-62)

This interim rule revises FAR Subpart 33.2 and section 52.233-1 to add policy, guidance, and criteria for use of alternative dispute resolution techniques.

Dated: December 23, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition
Policy.

Federal Acquisition circular

Federal Acquisition Circular (FAC) 90-10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-10 is effective December 30, 1991, except for Item II, Removal of Toshiba Sanctions, which is effective December 29, 1991.

Dated: December 20, 1991

Eleanor R. Spector,

Director of Defense Procurement.

Dated: December 23, 1991.

Ida Ustad,

Acting Associate Administrator, Office of
Acquisition Policy, General Services
Administration.

Dated: December 23, 1991.

Darleen A. Druryun,

Assistant Administrator for Procurement,
NASA.

[FR Doc. 91-31081 Filed 12-27-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAC 90-10; FAR Case 91-53; Item I]

Federal Acquisition Regulation;
Increase in Cost or Pricing Data
Threshold

AGENCIES: Department of Defense
(DOD), General Services Administration
(GSA), and National Aeronautics and
Space Administration (NASA).

ACTION: Interim rule with request for
comment.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council have

agreed to revise FAR parts 14, 15, and 52 to increase the threshold for submission of cost or pricing data for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard.

DATES: Effective Date: December 30, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 28, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90-10, FAR case 91-53 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-10, FAR case 91-53.

SUPPLEMENTARY INFORMATION:

A. Background

Section 803 of Public Law 101-510 amended subsection 2306a(a)(1) of title 10, United States Code, by increasing the threshold for submission of cost or pricing data from \$100,000 to \$500,000 for DOD, NASA, and the Coast Guard.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirements for certified cost or pricing data do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-10, FAR Case 91-53) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains information collection requirements. Accordingly, a request for approval of a revision to reduce the burden of a currently approved information collection

requirement concerning increase in cost or pricing data threshold was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a Federal Register (56 FR 56987) notice on November 7, 1991. Approval for the revised burden was granted under OMB Control Number 9000-0013 on November 27, 1991.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 90-10 as an interim rule. This action is necessary because section 803 of Public Law 101-510 amended subsection 2306a(a)(1) of title 10, United States Code, to increase the threshold for submission of cost or pricing data for the DoD, the NASA, and the Coast Guard.

In view of the statutory change, it is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: December 23, 1991.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Increase in Cost or Pricing Data Threshold

This interim rule amends FAR subparts 14.2, 15.6, and 52.2 to increase the threshold for submission of certified cost or pricing data from \$100,000 to \$500,000 for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard pursuant to the requirements of section 803 of Public Law 101-510. The statutory threshold applicable to contracts awarded by other agencies remains at \$100,000.

Therefore, 48 CFR parts 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

14.201-7 [Amended]

2. Section 14.201-7 is amended in paragraphs (a), (b)(1), and (c)(1) by removing the period after the figure "\$100,000" and inserting ", or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000." in its place.

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.804-2 is amended by revising paragraph (a) to read as follows:

15.804-2 Requiring certified cost or pricing data.

(a)(1) Except as provided in 15.804-3, certified cost or pricing data are required before accomplishing any of the following actions:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts) expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for contracts awarded after December 5, 1990, expected to exceed \$500,000.

(ii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for modifications of any sealed bid or negotiated contract awarded after December 5, 1990 (whether or not cost or pricing data were initially required), when the modification involves a price adjustment expected to exceed \$500,000. (For example, a \$30,000 modification resulting from a reduction of \$70,000 and an increase of \$40,000 is a pricing adjustment exceeding \$100,000, and a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data,

when the subcontract is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts awarded under prime contracts awarded after December 5, 1990, when the subcontract is expected to exceed \$500,000. (But see 15.804-3(i).)

(iv) The modification of any subcontract covered by subdivision (a)(1)(iii) of this subsection, when the price adjustment (see subdivision (a)(1)(ii) of this subsection) is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts awarded under prime contracts awarded after December 5, 1990, when the modification involves a price adjustment expected to exceed \$500,000.

(2) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in subparagraph (a)(1) of this subsection provided the action exceeds the small purchase limitation. For such pricing actions, the instances in which certified cost or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor—

(i) Has been the subject of recent or recurring, and significant findings of defective pricing;

(ii) Currently has significant deficiencies in its cost estimating systems; or

(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.

The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer's written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.

(3) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.

(4) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2)).

4. Section 15.804-3 is amended by (a) removing in the second sentence of paragraph (c)(7) the phrase "is \$100,000 or more" and inserting "exceeds the pertinent threshold set forth at 15.804-2(a)(1)" in its place; (b) revising the introductory text of paragraph (e); and (c) amending the fifth sentence of paragraph (i) by removing the figure "\$100,000" and inserting "the pertinent threshold set forth at 15.804-2(a)(1)" in its place to read as follows:

15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(e) *Claiming and granting exemption.* To receive an exemption under paragraph (c) or (d) of this subsection, the offeror must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when the total proposed amount exceeds the pertinent threshold set forth at 15.804-2(a)(1), and more than one catalog item for which an exemption is claimed exceeds \$50,000. When an exemption is claimed for more than one item in a proposal, a separate SF 1412 is required for each item exceeding \$50,000 except as otherwise provided in the solicitation. The contracting officer may grant an exemption and need not require the submission of SF 1412 when—

15.804-4 [Amended]

5. Section 15.804-4 is amended in paragraph (h) by removing the figure "\$100,000" both times it occurs and inserting "the pertinent threshold set forth at 15.804-2(a)(1)" in its place.

6. Section 15.804-6 is amended by revising the heading and paragraph (a) to read as follows:

15.804-6 Submission of data.

(a)(1) The contracting officer shall specify (i) whether or not cost or pricing data are required, (ii) whether or not certification will be required, and (iii) the form (see paragraph (b) of this subsection) in which the cost or pricing data shall be submitted. Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

(2) When certified cost or pricing data are not required because an action is below the pertinent threshold set forth at 15.804-2(a)(1), the contracting officer may request partial or limited data to determine a reasonable price. The contracting officer shall request only that data which the contracting officer considers necessary to determine a reasonable price. For example, cost data

might be necessary to support an analysis of material costs, but not for labor and overhead costs. When such partial or limited data are requested, the contracting officer should require, as a minimum, the submission of information on the prices and quantities at which the offeror has previously sold the same or similar products.

Table 15-2 Instructions for Submission of a Contract Pricing Proposal

7. Table 15-2, which follows section 15.804-6(b)(2), is amended in item 1 in the entry "Competitive Methods" by removing the words "over \$100,000" and inserting in their place "exceeding the pertinent threshold set forth at 15.804-2(a)(1)"; in the first sentence of the entry "Noncompetitive Methods" by removing the words "over \$100,000" and inserting in their place "exceeding the pertinent threshold set forth at 15.804-2(a)(1)"; and in the fourth sentence of the entry "Noncompetitive Methods" by removing the figure "\$100,000" and inserting in its place "the pertinent threshold set forth in 15.804-2(a)(1) (iii) and (iv)".

15.806-1 [Amended]

8. Section 15.806-1 is amended in the first sentence of paragraph (b) by removing the figure "\$100,000" the first time it appears and inserting in its place "the pertinent threshold set forth at 15.804-2(a)(1)(iii)"; and by removing the figure "\$100,000" the second time it appears and inserting in its place "the pertinent threshold set forth at 15.804-2(a)(1)(iv)".

15.806-2 [Amended]

9. Section 15.806-2 is amended in paragraph (a)(2) by removing the figure "\$100,000" and inserting in its place "the pertinent threshold set forth at 15.804-2(a)(1) (iii) and (iv)".

15.808 [Amended]

10. Section 15.808 is amended in paragraph (a)(6) by removing the words "over \$100,000" and inserting in their place "exceeding the thresholds set forth at 15.804-2(a)(1)"; and in paragraph (a)(7) by removing the phrase "in the case of any price negotiation under \$100,000" and inserting in its place "by the contracting officer under 15.804-2(a)(2)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214-27 (Amended)

11. Section 52.214-27 is amended by removing in the heading of the clause the date "(JAN 1991)" and inserting in its place "(DEC 1991)"; and inserting in paragraph (a), after the figure "\$100,000", the words "or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, more than \$500,000."

12. Section 52.214-28 is amended by removing in the heading of the clause the date "(APR 1985)" and inserting in its place "(DEC 1991)"; inserting in paragraph (a), after the figure "\$100,000", the words "or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000,"; and revising paragraphs (b) and (d) to read as follows:

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Dec 1991)

(b) Before awarding any subcontract expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds \$500,000 when entered into. (End of clause)

52.215-23 (Amended)

13. Section 52.215-23 is amended by removing in the heading of the clause the date "(JAN 1991)" and inserting in its place "(DEC 1991)"; and inserting in paragraph (a), after the figure "\$100,000", the words "or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000,".

14. Section 52.215-24 is amended by removing in the heading of the clause the date "(APR 1985)" and inserting in its place "(DEC 1991)"; and revising paragraphs (a) and (c) to read as follows:

52.215-24 Subcontractor Cost or Pricing Data.

Subcontractor Cost or Pricing Data (Dec. 1991)

(a) Before awarding any subcontract expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000, when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(c) In each subcontract that exceeds \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds \$500,000, when entered into, the Contractor shall insert either—

15. Section 52.215-25 is amended by removing in the heading of the clause the date "(APR 1985)" and inserting in its place "(DEC 1991)"; and revising paragraphs (a), (b), and (d) to read as follows:

52.215-25 Subcontractor Cost or Pricing Data—Modifications.

Subcontractor Cost or Pricing Data—Modifications (Dec 1991)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000; and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$100,000, or \$500,000 for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds \$500,000, when entered into. (End of clause)

[FR Doc. 91-31082 Filed 12-27-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 90-10; FAR Case 91-66; Item II]

Federal Acquisition Regulation; Removal of Toshiba Sanctions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and Defense Acquisition Regulations Councils have agreed to delete, in their entirety, FAR Subpart 25.10, Sanctions for Violations of Export Controls, the provision at 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, and the clause at 52.225-13, Restrictions on Contracting with Sanctioned Persons.

EFFECTIVE DATE: December 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501-0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-10, FAR Case 91-66.

SUPPLEMENTARY INFORMATION:

A. Background

The current FAR subpart 25.10, and its prescribed provisions and clauses, imposes (a) procurement sanctions on Toshiba Corporation and its subsidiary, Toshiba Machine Company, and on Kongsberg Vaapenfabrikk and its subsidiary, Kongsberg Trading Company, and (b) import sanctions on all products produced by Toshiba Machine Company and Kongsberg Trading Company. These sanctions were imposed by Executive Order 12661, dated December 27, 1988. The sanctions expire on December 28, 1991; accordingly, the regulation is deleted, in

its entirety, effective on December 29, 1991.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely removes the sanctions imposed by Executive Order 12661 which will expire on December 28, 1991. Effects on small entities, if any, would result from the expiration of the Executive Order and not from this regulatory change.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: December 23, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Removal of Toshiba Sanctions

FAR Subpart 25.10, Sanctions for Violations of Export Controls, the provision at FAR 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, and the clause at FAR 52.225-13, Restrictions on Contracting with Sanctioned Persons, are being deleted, in their entirety, from the FAR because the sanctions imposed by Executive Order 12661 dated December 27, 1988, will expire on December 28, 1991. Therefore, the regulatory policy contained in the subpart, the provision, and the clause no longer applies after December 28, 1991.

Therefore, 48 CFR parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.10 [Removed]

2. Supart 25.10, consisting of §§ 25.1000 through 25.1005, is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225-12 and 52.225-13 [Removed and reserved]

3. Sections 52.225-12 and 25.225-13 are removed and reserved.

[FR Doc. 91-31083 Filed 12-27-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 33 and 52

[FAC 90-10; FAR Case 91-62; Item III]

Federal Acquisition Regulation; Alternative Dispute Resolution

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 90-10 amends the Federal Acquisition Regulation (FAR) to revise subpart 33.2 and section 52.233-1 to implement the Administrative Dispute Resolution Act (Pub. L. 101-552) and recommendations from the Defense Advisory Panel on Government-Industry Relations (DAPGIR). The revisions encourage the use of alternative dispute resolution (ADR) techniques to resolve issues in controversy.

DATES: Effective Date: December 30, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 28, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90-10, FAR case 91-62 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 510-4755. Please cite FAC 90-10, FAR case 91-62.

SUPPLEMENTARY INFORMATION:

A. Background

Revisions to FAR subpart 33.2 and 52.233-1 have been made in this interim rule. FAR 33.201, Definitions, is revised to add definitions of the terms "Alternative dispute resolution," "Issue in controversy," and "Neutral person." FAR 33.202, Contract Disputes Act of 1978, is revised to include a reference to Public Law 101-552 and to clarify the language. FAR 33.204, Policy, is revised to encourage use of alternative dispute resolution (ADR) techniques. FAR 33.207, Contractor claim certification, is revised at paragraph (a) to require that any claim subject to ADR, regardless of dollar amount, be certified by the contractor. A new section is added at 33.214, Alternative dispute resolution. It describes the objective of ADR, sets forth criteria for use of such techniques, authorizes agencies to establish ADR procedures, and suggests use of a neutral person. FAR 52.233-1, Disputes, is revised to encourage consideration of ADR to resolve disputes.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because less than 20% of small entities are affected by the disputes process and the economic impact on small businesses is expected to be less than significant. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from Small Businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-10, FAR Case 91-62) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim

rule without prior opportunity for public comment. This action is necessary to implement the Administrative Dispute Resolution Act (Pub. L. 101-552). The Act requires that FAR regulations be promulgated by November 15, 1991. Pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule, however.

List of Subjects in 48 CFR Parts 33 and 52

Government procurement.

Dated: December 23, 1991.

Harry S. Rosinsky,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Alternative Dispute Resolution

This interim rule revises FAR subpart 33.2 and section 52.233-1 to add policy, guidance, and criteria for use of alternative dispute resolution techniques.

Therefore, 48 CFR parts 33 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 33 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

2. Section 33.201 is amended by adding, in alphabetical order, definitions as follows:

33.201 Definitions.

Alternative dispute resolution means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

Issue in controversy means a material disagreement between the Government and the contractor related to a claim or which could result in a claim. An issue in controversy can be all or part of a claim.

Neutral person, as used in this subpart, means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or

employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

3. Section 33.202 is revised to read as follows:

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), as amended by the Administrative Dispute Resolution Act (Pub. L. 101-552), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for: (a) the payment of interest on contractor claims; (b) certification of contractor claims; and (c) a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

4. Section 33.204 is revised to read as follows:

33.204 Policy.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Agencies are encouraged to use alternative dispute resolution (ADR) procedures to the maximum extent practicable in accordance with the authority and the requirements of the Administrative Dispute Resolution Act (Pub. L. 101-552) and agency policies.

5. Section 33.207 is amended by revising paragraph (a) introductory text to read as follows:

33.207 Contractor claim certification.

(a) A contractor claim exceeding \$50,000, or any claim regardless of amount when using alternative dispute resolution procedures, shall be accompanied by a certification that—

33.214 [Redesignated as 33.215]

6. Section 33.214 is redesignated as 33.215 and a new 33.214 is added to read as follows:

33.214 Alternative dispute resolution.

(a) The objective of using alternative dispute resolution (ADR) procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

(1) Existence of an issue in controversy;

(2) A voluntary election by both parties to participate in the ADR process;

(3) An agreement on alternative procedures and terms to be used in lieu of formal litigation;

(4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy; and

(5) Certification by the contractor in accordance with 33.207.

(b) ADR procedures may be used at any time that the contracting officer has authority to settle the issue in controversy and may be applied to a portion of a claim. When ADR procedures are used subsequent to issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

(c) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.233-1 is amended by—

(a) Revising the introductory text, the date of the clause, and paragraph (a);

(b) Redesignating paragraphs (g) and (h) as (h) and (i) and adding a new paragraph (g);

(c) Removing the date "APR 1984" in Alternate I and inserting in its place "DEC 1991";

(d) Redesignating paragraph (h) of Alternate I as paragraph (i);

(e) Removing from the introductory paragraph of Alternate I the words "paragraph (h)", everytime they appear, and inserting in their place "paragraph (i)"; and

(f) Removing the derivation lines following "(End of clause)" and Alternate I to read as follows:

52.233-1 Disputes.

As prescribed in 33.215, insert the following clause:

Disputes (Dec 1991)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(g) At the time a claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent,

may agree to use alternative means of dispute resolution. When using alternative dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph (d)(2) of this clause, and executed in accordance with paragraph (d)(3) of this clause.

(End of clause)

* * *

[FR Doc. 91-31084 Filed 12-27-91; 8:45 am]

BILLING CODE 6820-34-M

PART 3—SOLICITATION AND PROPOSAL REQUIREMENTS

(a) The solicitation shall contain the following information:

- (1) A description of the work to be performed, including the location, nature, and scope of the work.
- (2) A description of the qualifications and experience required of the contractor.
- (3) A description of the methods and procedures to be used in the performance of the work.
- (4) A description of the schedule and timeline for the work.
- (5) A description of the budget and funding for the work.
- (6) A description of the risks and uncertainties associated with the work.
- (7) A description of the communication and reporting requirements for the work.
- (8) A description of the dispute resolution procedures for the work.

(b) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

(c) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

(d) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

(e) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

(f) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

(g) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

(h) The solicitation shall also contain the following information:

- (1) A description of the contract terms and conditions.
- (2) A description of the payment and pricing requirements.
- (3) A description of the performance and delivery requirements.
- (4) A description of the termination and cancellation requirements.
- (5) A description of the assignment and subcontracting requirements.
- (6) A description of the intellectual property and confidentiality requirements.
- (7) A description of the insurance and bonding requirements.
- (8) A description of the other requirements and conditions of the contract.

Register Federal

Monday
December 30, 1991

Part VIII

Department of Education

34 CFR Parts 300 and 303

**Assistance to States for Education of
Handicapped Children and Early
Intervention Program for Infants and
Toddlers With Handicaps; Proposed Rule**

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps**AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations at 34 CFR part 300, implementing the Assistance to States for Education of Handicapped Children program authorized by part B of the Individuals with Disabilities Education Act (part B), and the regulations at 34 CFR part 303, implementing the Early Intervention Program for Infants and Toddlers with Handicaps authorized by part H of the Individuals with Disabilities Education Act (part H), by removing from their nonsupplanting regulations the provisions that prohibit the use of funds awarded under those programs to displace State or local funds for any "particular cost".

DATES: Comments must be received before March 30, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Lucille Slegler, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3615, Washington, DC 20202-2720; telephone: (202) 732-1104; (202) 732-1090 for TDD services.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Weiss; telephone: (202) 732-1375; (202) 732-1090 for TDD services.

SUPPLEMENTARY INFORMATION: Part B authorizes formula grants to States, and through them to local educational agencies, to help provide special education and related services to children with disabilities. To receive Part B funds from the State, each local educational agency is required to submit an application that contains specified assurances regarding use of those funds, including an assurance that Part B funds will be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds. The statutory requirement prohibiting local educational agencies from supplanting State and local funds with part B funds is implemented by 34 CFR 300.230 of the part B regulations.

Part H authorizes assistance to States to help them plan, develop, and implement a State-wide system of early intervention programs for infants and toddlers with disabilities and their families. Each participating State must make an application to the Secretary for its Part H grant award. The statute requires this application to contain specified assurances regarding the use of part H funds, including an assurance, similar to the assurance in part B, that part H funds will be used to supplement, and not supplant, State and local funds expended for early intervention services for infants and toddlers with disabilities. The statutory requirement prohibiting States from supplanting State and local funds with part H funds is implemented by 34 CFR 303.124 of the part H regulations.

During the Education Summit held in September 1989, President Bush made a commitment to the State Governors that the Federal Government would give States more flexibility in the use of Federal education program funds while ensuring accountability in the use of those funds by recipients. These proposed regulatory changes, which would continue to require that States maintain or increase the total amount of funds spent to meet Part B and Part H requirements, are being made consistent with this commitment. These proposed regulatory changes also are supportive of the goals of the AMERICA 2000 Education Strategy, because they will increase the ability of State and local educational agencies to develop and implement innovative strategies to meet the needs of children with disabilities more effectively. The part B and part H nonsupplanting provisions, which are virtually identical, currently include the following two-pronged test for determining compliance with the nonsupplanting requirements for these programs:

Aggregate Test: The total amount of State and local funds budgeted for expenditures in the current fiscal year for the education of children with disabilities under Part B or for early intervention services for infants and toddlers with disabilities and their families under part H must be at least equal to the amount of those funds actually expended in the most recent preceding fiscal year for which information is available.

Particular Cost Test: Funds awarded under part B and Part H may not be used to displace State or local funds for any "particular cost".

The "particular cost" test was included in the part B regulations, first published in 1977, to assist in ensuring that part B funds would be used to

increase State and local efforts for the education of children with disabilities. Because the Secretary sought to coordinate the fiscal requirements in Part H with those of part B as closely as possible, the nonsupplanting provisions in the part H regulations published in 1989 were modeled after those in the part B regulations. However, based on the Secretary's experience in administering part B, the Secretary has found that under the "particular cost" test, local educational agencies have been found out of compliance with the part B nonsupplanting requirement, even in instances in which the total amount of State and local funds budgeted for the education of children with disabilities in a fiscal year was maintained at, or increased from the amount expended in the most recent preceding fiscal year. For example, if a local educational agency spends part B funds to pay for a teacher's salary that was previously paid for with State or local funds, a supplanting violation would occur, even though the total amount of State and local funds spent on special education is greater than the amount spent the previous year.

The Secretary believes that the particular cost test is unnecessary to ensure compliance with the statutory requirements that Federal funds be used to supplement, or increase, the level of State and local funds expended to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families, and not to replace those State and local funds. The Secretary also believes that the particular cost provision limits the ability of State and local agencies to make financial adjustments that could assist in improving the quality of services for children with disabilities and for infants and toddlers with disabilities and their families.

Therefore, to give States and local educational agencies more flexibility in the use of part B and part H funds, while still requiring States to maintain or increase the total amount of State and local funds expended to meet part B and part H requirements, the Secretary proposes to amend the part B regulations at 34 CFR 300.230 by deleting the particular cost provision at § 300.230(b)(2) and to amend the part H regulation at 34 CFR 303.124 by deleting the particular cost provision at § 320.303.124(b)(2). Also, the Secretary proposes to delete the comment following § 300.230 of the Part B regulations and the note following § 303.124 of the part H regulations since

this comment and note were intended primarily to distinguish between the "aggregate" and "particular cost" tests. The Secretary believes that these proposed regulatory changes will serve to enhance State and local efforts to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families, and will in no way serve to diminish the rights and protections guaranteed to children with disabilities and their parents by part B of the Act and the rights and protections guaranteed to infants and toddlers with disabilities and their families by part H of the Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility and Certification

The Secretary certifies that these proposed regulations would not have a significant impact on a substantial number of small entities.

To the extent that these proposed regulations would affect States and State agencies, the regulations would not have an impact on small entities, since States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The few small entities that would be affected by these proposed regulations are small local educational agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small local educational agencies affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork

Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3615, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects

34 CFR Part 300

Administrative practice and procedures, Education, Education of individuals with disabilities, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 303

Education, Education of the handicapped, Grant programs—

education, Medical personnel, State educational agencies.

Dated: November 1, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children and 84.181; Early Intervention program for Infants and Toddlers with Handicaps)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending parts 300 and 303 as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.2 [Amended]

2. Section 300.230 is amended by removing the colon after the word "section" in paragraph (b); removing "(1) The" in paragraph (b)(1) and adding in its place ", the"; removing paragraph (b)(2) and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; and removing the Comment following the section.

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

3. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

§ 303.124 [Amended]

4. Section 303.124 is amended by removing the dash after the word "section" in paragraph (b); removing the "(1) The" in paragraph (b)(1) and adding in its place ", the"; removing paragraph (b)(2) and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; and removing the Note following the section.

[FR Doc. 91–31074 Filed 12–27–91; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Monday
December 30, 1991

Part IX

Environmental Protection Agency

Twenty-Ninth Report of the Interagency
Testing Committee to the Administrator;
Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-41036; FRL 4007-6]

Twenty-Ninth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority Testing List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-Ninth Report to the Administrator of EPA on November 27, 1991. As noted in this Report, which is included with this notice, the Committee revised the Priority Testing List by adding one chemical, white phosphorus, and one chemical group, the alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers. These chemicals are recommended. There are no designated or recommended with intent-to-designate chemicals.

The ITC removed six chemicals from the Priority Testing List in the 29th Report as a result of EPA actions. Five brominated flame retardants, designated in the 25th ITC Report, were removed because EPA issued a proposed rule on June 25, 1991 (56 FR 29140). 4-Vinylcyclohexene, designated in the 26th Report, was removed because EPA issued a consent order on September 23, 1991 (56 FR 47912).

EPA invites interested persons to submit written comments on the Report. **DATES:** Written comments should be submitted by January 29, 1992.

ADDRESSES: Send four copies of written submissions to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-41036; FRL 4007-6). The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Report to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 et seq.; 15 U.S.C. 2601 et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) Priority Testing List at least every 6 months. The ITC's most recent revisions to this List are included in the Committee's Twenty-Ninth Report. The Report was received by the Administrator on November 27, 1991, and is included in this Notice. The Report adds one chemical and one chemical group to the TSCA section 4(e) Priority Testing List.

II. Written and Oral Comments

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the *Federal Register* adding the substances recommended in the ITC's Twenty-Ninth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. The delay in publishing this notice is necessary to avoid an overlap in the reporting period for chemicals included in the ITC's 28th list. That notice will also add the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, exposure, and release information on the listed chemicals.

III. Status of List

The ITC's Twenty-Ninth Report notes the addition of one chemical and one chemical group to the Priority Testing List, and the removal of 5 brominated flame retardants and 4-vinylcyclohexene from the List. The

current Priority Testing List contains 26 chemicals and 21 chemical groups, 13 of these chemicals are designated.

Authority: 15 U.S.C. 2603.

Dated: December 16, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

Twenty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

The U.S. Congress created the Interagency Testing Committee (ITC) under the Toxic Substances Control Act (TSCA) to recommend chemicals and chemical groups to the Administrator of the U.S. Environmental Protection Agency (EPA) for priority testing consideration and to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations represented on the Committee. Congress directed the Committee to: (1) Organize their recommendations as the Priority Testing List, (2) revise the Priority Testing List at least every 6 months and (3) transmit these revisions to the EPA Administrator for publication in the *Federal Register*.

As a result of its deliberations during this reporting period (5/16/91 to 11/27/91), the Committee is revising the TSCA section 4(e) Priority Testing List by recommending one chemical and one chemical group. The Committee's computerized, substructure-based chemical selection expert systems were used to identify the chemicals in groups that are likely to satisfy multiple data needs of Member Agencies and others. During this reporting period, the Committee (1) considered available information on 5 chemicals and 14 chemical groups, (2) discussed information on Committee activities at the North American Benthological Society Technical Information Workshop on Toxicity Assessment Techniques for Aquatic Invertebrates, (3) participated in CPSC's, EPA's and NCI's chemical testing meetings, (4) met with the Synthetic Organic Chemical Manufacturers Association and the Chemical Manufacturers Association to discuss completed, ongoing and planned testing of chemical groups, (5) processed chemicals nominated by Maryland's Department of the Environment, (6) prepared testimony for U.S. Senate hearings on chemicals causing adverse reproductive effects, (7) published

unambiguous tables of the 124 chemicals and 39 chemical groups on or removed from the Priority Testing List, (8) initiated a review of 350 studies submitted to the EPA or retrieved from recent literature for chloroalkyl phosphates, (9) shared test data resulting from EPA's implementation of ITC's testing recommendation with a permitting authority and (10) deferred one chemical from testing consideration.

Chemicals or chemical groups (entries) on the Priority Testing List are designated, recommended with intent-to-designate or recommended by the

Committee. Designations were created by the U.S. Congress when they drafted TSCA. Recommendations with intent-to-designate were established by the Committee in their 17th Report (50 FR 47603; November 19, 1985).

Recommendations were established by the Committee in their 11th Report (47 FR 54626; December 3, 1982).

Revisions to the Priority Testing List

Revisions to the Priority Testing List are presented, together with the types of testing recommended, in Table 1. The footnote letters following Table 1

acknowledge the Committee's efforts to comprehensively search ongoing testing-related activities for chemicals under section 110 of the Superfund Amendments and Reauthorization Act (SARA), section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), section 301 of the Clean Air Act Amendments, Priority 1 substances in the Organization for Economic Cooperation and Development's chemical testing program and available information previously submitted under TSCA section 8(a) and 8(d). Table 1 reads as follows:

TABLE 1.—REVISIONS TO THE SECTION 4(E) PRIORITY TESTING LIST

Group	CAS No.	Chemical	Action	Date	Recommended Tests
Alkyl-, bromo-, chloro-, hydroxy-methyl diaryl ethers.	7723-14-0	White phosphorus ^{1 2}	Recommended	11/91	Chemical fate: Persistence in surface waters and sediments. Health effects: None. Ecological effects: Toxicity to migratory birds and other wildlife.
			Recommended	11/91	Chemical fate: Physical and chemical properties and biodegradation screening. Health effects: Screening for subchronic, mutagenic, reproductive, developmental and neurotoxic effects, except diphenyl oxide. Ecological effects: Screening for toxicity to algae, aquatic invertebrates and fish.

¹ Superfund Amendments and Reauthorization Act (SARA) Section 110.

² Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.

Listed below are the individual chemicals for the diaryl ethers in Table 1. Chemical nos. 1 through 7 are alkyl diaryl ethers, chemical no. 8 is a bromodiaryl ether, chemical nos. 9 through 12 are chlorodiaryl ethers, chemical nos. 13 and 14 are hydroxymethyl diaryl ethers.

No.	Chemical Name	CAS No.
1.	Benzene, 1,1'-oxybis-	101-84-8 ^{1 2}
2.	1,4-Diphenoxybenzene	3061-36-7
3.	Benzene, 1-methyl-3-phenoxy-	3586-14-9
4.	Benzene, 1,1'-oxybis[methyl-]	28299-41-4
5.	1,1'-Biphenyl, phenoxy-	28984-89-6
6.	Benzene, 1,1'-oxybis[(1,1,3,3-tetramethylbutyl)-]	61702-88-3
7.	Benzene, 1,1'-oxybis[dodecyl-]	69834-19-1
8.	Benzene, 1-(bromomethyl)-3-phenoxy-	51632-16-7
9.	2-Chloro-1-(3-methylphenoxy)-4-(trifluoromethyl)benzene	42874-96-4
10.	Phenol, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, acetate	50594-77-9
11.	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-	63734-62-3
12.	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, potassium salt	72252-48-3
13.	Benzenemethanol, 3-phenoxy-	13826-35-2
14.	Benzenemethanol, 3-phenoxy-, acetate	50789-44-1

¹ Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).

² TSCA section 8(d) Health and Safety Data Reporting Rule.

TSCA Interagency Testing Committee*Statutory Member Agencies and Their Representatives*

Council on Environmental Quality
Larry Clark, member (see Note 1)

Department of Commerce
Willie E. May, member (see Note 2)

Environmental Protection Agency
James B. Willis, member (see Note 3)
John S. Leizke, alternate (see Note 4)

National Cancer Institute
Thomas P. Cameron, member (see Note 5)
Richard Adamson, alternate (see Note 6)

National Institute for Environmental Health Sciences
Errol Zeiger, member (see Note 7)
James K. Selkirk, alternate

National Institute for Occupational Safety and Health
Robert W. Mason, member and Chairperson
Rodger L. Tatken, alternate

National Science Foundation
Carter Kimsey, member (see Note 8)
Jarvis L. Moyers, alternate

Occupational Safety and Health Administration
Christine Whittaker, member (see Note 9)
Stephen Mallinger, alternate

Liaison Agencies and Their Representatives

Agency for Toxic Substances and Disease Registry
Sharunda Buchanan (see Note 10)

Consumer Product Safety Commission
Lakshmi C. Mishra

Department of Agriculture
Donald Derr, member (see Note 11)
Richard M. Parry, Jr., alternate

Department of Defense
Randall S. Wentsel

Department of the Interior
Clifford P. Rice, member
Barnett A. Rattner, alternate

Department of Transportation
James O'Steen, member
George Cushmac, alternate

Food and Drug Administration
Charles J. Kokoski, member
Raju Kammula, alternate

National Library of Medicine
Vera Hudson

National Toxicology Program
Miriam Davis, member
Victor A. Fung, alternate and Vice Chairperson

U.S. International Trade Commission
James Raftery, member
Edward Matusik, alternate

Committee Staff

John D. Walker, Ph.D., Executive Director
Norma S.L. Williams, Executive Assistant

Support Staff

Alan Carpien, office of the General Counsel, EPA

Notes:

1. Appointed on November 21, 1991.
2. Appointed on November 8, 1991.
3. Appointed on August 5, 1991.
4. Appointed on August 5, 1991.
5. Appointed on November 22, 1991.
6. Appointed on November 22, 1991.
7. Appointed on November 15, 1991.
8. Appointed on September 28, 1991; on an IPA from August 1990 to August 1991.
9. Appointed on August 15, 1991.
10. Appointed on September 11, 1991.
11. Appointed on November 26, 1991.

The Committee very much appreciates the efforts of former members and alternates from ATSDR (Deborah Barsotti, member from 3/89-11/91), EPA (Letitia Tahan, member from 8/89-8/91 and Vince Nabholz, alternate from 8/89-8/91), NSF (Bill Pengelly, member from 8/90-8/91), and OSHA (Loretta Schuman, member from 9/89-8/91). These members and alternates were responsible for initiating and sustaining intraagency efforts that resulted in Member Agency nomination of chemical groups (brominated flame retardants, isocyanates, IRIS (RfC/RfD) chemicals, aldehydes, alkynes, nitroalcohols, phosphoniums, hydrazines, oxiranes, alkoxysilanes, aldehyde hydrates and isothiocyanates) and chemicals (1,1'-methylenebis-4-isocyanatocyclohexane and *N*-phenyl-1-naphthylamine) that were included in the Committee's 25th, 26th, 27th and 28th Reports. The ITC acknowledges the assistance and support given by the staff of Syracuse Research Corp. (technical support contractor) and personnel of the EPA Office of Pollution Prevention and Toxics.

Chapter 1—Introduction

1.1 Background. The U.S. Congress created the TSCA Interagency Testing Committee (ITC) in 1976 and provided the ITC with statutory authority to screen, select and recommend chemicals and chemical groups to the EPA Administrator for priority health effects, chemical fate, and ecological effects testing consideration. When screening chemicals or chemical groups for consideration, Congress directed the Committee (which consists of members from 8 statutory and 10 liaison U.S. Government organizations) to consider 8 statutory factors including: (1) Quantities manufactured or released, (2) numbers of individuals exposed, (3) duration of exposure, (4) extent of human exposure, (5) structural relationships to known toxic substances, (6) availability of existing toxicity data, (7) reliability of available toxicity data

to predict hazard, and (8) availability of testing facilities to develop data for the recommended tests. Congress also directed the Committee to give priority attention to those chemicals or chemical groups known to cause or suspected of causing cancer, gene mutations or birth defects. Based on these Congressional directives, the Committee recommends chemicals or chemical groups that appear to have insufficient health effects, chemical fate, or ecological effects test data and that may present an unreasonable risk of injury to health or the environment, reasonably be anticipated to enter the environment in substantial quantities or involve significant or substantial human exposure.

Congress also created the ITC to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations and to enhance information exchange to promote cost-effective use of U.S. Government chemical testing resources by recommending testing of chemicals or chemical groups that are likely to satisfy multiple data needs of Member Agencies and others. The Committee's statutory responsibilities are described in section 4(e) of the Toxic Substances Control Act (TSCA; Public Law 94-469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.).

The Committee prepares the Priority Testing List of chemicals or chemical groups recommended for testing (by the chemical's manufacturers), transmits the Priority Testing List to the Administrator of the U.S. Environmental Protection Agency (EPA) and determines the order in which the EPA Administrator shall implement the testing recommendations under TSCA section 4(a) by designating those chemicals, from among its recommendations, to which the Administrator should respond within 12 months. Congress directed the Committee to revise the Priority Testing List at least every 6 months and required the EPA Administrator to publish the Committee's Reports in the **Federal Register**.

1.2 Committee's previous reports. Twenty-eight previous Reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register**. In these 28 Reports, the Committee recommended testing for 123 chemicals and 38 chemical groups. Chemical groups consist of one or more chemicals, isomers, congeners, mixtures, and so on that have a common substructure, use, testing information deficiency, exposure scenario, etc., and for which there is one common testing recommendation, e.g., aldehydes

recommended for ecological effects testing in the 27th Report. Chemicals can be members of chemical groups, but each is counted as a single chemical if their testing recommendations are different, e.g., the five chloroalkyl phosphates recommended in the 23rd Report.

1.3 Committee's activities during this reporting period. Between May 16, 1991 and November 27, 1991, the Committee examined lists of ongoing activities related to reducing testing information deficiencies for commercial chemicals, used their computerized, substructure-based, chemical selection expert systems to identify chemical groups in need of testing, identified chemicals that appeared to have insufficient health effects, chemical fate or ecological effects test data, considered the multiple data needs of Member Agencies and others, and recommended chemicals and chemical groups with insufficient test data based on concerns for potential toxicity, exposure or environmental release.

1.3.a Chemical and chemical group selections. The Committee recommended one chemical (white phosphorus) and one chemical group (alkyl-, bromo-, chloro-, hydroxymethyl diarylethers) for testing (Table 1). White phosphorus and alkyl-, bromo-, chloro-, hydroxymethyl diarylethers were recommended, not designated, because the Committee wants to review the TSCA section 8(a) and 8(d) information and any use exposure and release information as well as any physical chemical property information that is voluntarily submitted, before deciding whether to designate or withdraw these chemicals for testing. When the Committee recommended white phosphorus for chemical fate and ecological effects testing, it considered the data needs of the U.S. Department of the Interior, the ongoing activities of the Department of Defense and the regulatory authorities of the Department of Transportation. Test data needs are considered during selection of chemicals and chemical groups for testing. However, it may be difficult to identify test data needs or to anticipate how test data might be used until EPA implements the ITC's testing recommendations and industry develops sufficient data to distinguish between hazardous versus non-hazardous chemicals (e.g., see third paragraph of chapter 1.3.c below). When the Committee recommended alkyl-, bromo-, chloro-, hydroxymethyl diarylethers for health effects, chemical fate and ecological effects screening tests, it considered the uncertainties related to

production and use, potential exposures and releases from production, processing and use, potential for persistence in the environment, potential to cause adverse health or ecological effects and the paucity of publicly-available data for over 90 percent of these chemicals. These recommendations are consistent with the Committee's comprehensive approach of using their computerized processes to: (1) Identify chemicals in substructure-based groups in need of screening tests, (2) review recently requested production and exposure data and non-public health and safety studies, (3) meet with interested groups to identify commercially-important chemicals that need to be tested (4) withdraw chemicals or tests to avoid unnecessary or duplicative testing, (5) characterize testing information deficiencies identified by Member Agencies as well as others, and (6) integrate available information into a consolidated testing program likely to serve multiple users.

There are numerous advantages associated with nominating chemicals to the Committee. These were described in detail in chapter 1.3.a of the 27th Report (56 FR 9534, March 6, 1991). Further information about nominating chemicals or chemical groups to the Committee can be obtained by calling the Committee's Executive Director at area code 202/260-1820 or the Committee's Executive Assistant at area code 202/260-1825.

1.3.b Comprehensive information processing. During this reporting period, several For Your Information (FYI), TSCA section 8(d) and 8(e) documents were reviewed. These documents are stored on microfiche in the TSCA Public Docket Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room G-004 NE Mall, 401 M Street, SW., Washington, D.C. 20460. These microfiched documents are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (1-800-336-4700), and from Chemical Information Systems, Inc., 7215 York Road, Baltimore, Maryland 21212 (1-800-CIS-USER). The Committee referenced several of these documents in chapter 2 of this report and readers are referred to the above addresses to obtain further information. Interested parties can also obtain, from the EPA address, copies of publicly-available reports, letters and published references supporting recommendations of chemicals in this report.

The Committee continues to comprehensively search available

domestic and international lists of ongoing activities related to reducing testing information deficiencies on chemicals under review. Efforts to conduct these searches have identified numerous chemicals previously reviewed or recommended by the Committee. Many of the chemicals previously reviewed or recommended by the Committee are on ATSDR's list, the Toxics Release Inventory or the list of Hazardous Air Pollutants because of test data developed, in part, as a response to EPA's implementation of ITC's testing recommendation or as a result of other testing after ITC review. Committee recommendations have resulted in the submission of: (1) Substantive TSCA section 8(a) production, exposure and release information, (2) thousands of non-public TSCA section 8(d) studies and (3) hundreds of TSCA section 4(a) and (d) studies that were conducted as a result of the EPA's implementation of the Committee's testing recommendations. The Committee continues to review information on these and other lists. Efforts to conduct searches also identified chemicals for which TSCA information-gathering activities are ongoing (see Table 1 footnotes). The Committee makes the results of these searches publicly available by referencing TSCA submissions in Reports to the EPA Administrator or making tables and references of these submissions available in the public dockets supporting a Report to the EPA Administrator.

During this reporting period, the Committee considered available information on 5 chemicals and 14 chemical groups. Chemical groups under consideration include: alkenes, alkylamines, alkylethers, alkylsulfonates, amino aromatics, anhydrides, anthraquinones, aromatic dianhydrides, aromatic sulfhydryls, aromatic sulfonates, aryl ethers, benzothiazoles, carbamates, dialkylamines, dihydroxybenzenes, ethylhexyl derivatives, fluorinated and iodinated organics, glycol ethers, haloalkyl ethers, heterocyclics, hindered phenols, imidazoles, inorganics, isoindoles, isophthalic acids, IRIS chemicals, nitriles, nitroaromatics, nitroparaffins, *N*-phenylenediamines, phenolic antioxidants, phosphates, pyrrolidinones, sulfenamides, sulfonic acids, thiocarbamates, thiols, triazines, and xanthenes. The Committee recommended one chemical and one chemical group to the TSCA section 4(e) Priority Testing List. Review of the remaining chemicals and chemical groups is ongoing.

1.3.c Information dissemination. To emphasize the Committee's efforts to promote public understanding of the ITC's functions and purposes, the Committee is listing some of the Committee-related activities that occurred during this reporting period. On May 23, 1991, the Executive Director presented a keynote speech at the North American Benthological Society Technical Information Workshop on Toxicity Assessment Techniques for Aquatic Invertebrates. On several occasions, the Committee's Chairperson, Vice-Chairperson, Executive Director or Members participated in CPSC's, EPA's and NCI's meetings to discuss chemical testing.

To facilitate coordination of chemical testing and to promote conservation of chemical testing resources the Executive Director met with the Synthetic Organic Chemical Manufacturers Association and the Chemical Manufacturers Association to discuss completed, ongoing and planned testing of chemical groups. The Committee processed chemicals referred to the ITC by Maryland's Department of the Environment. The Executive Director prepared testimony for U.S. Senate hearings on chemicals causing adverse reproductive effects.

To enhance communication, the Executive Director and Executive Assistant frequently respond to questions related to chemicals reviewed or recommended by the ITC. During this reporting period, the Executive Director responded to a call from Peter Howe of EPA's Region V, who called to learn if the ITC had recommended 4-(1,1,3,3-tetramethylbutyl)phenol (TMBP) for testing. TMBP was recommended for testing in November 1982 as part of the Committee's 11th Report. EPA's implementation of the ITC's testing recommendation and industry testing of TMBP produced chemical fate and ecological effects data (TMBP is persistent and highly toxic to aquatic organisms) that Region V used as part of the Agency's National Pollutant

Discharge Elimination System permitting activities.

To promote a comprehensive evaluation of recent exposure information similar to that requested in the 28th Report, the Committee is soliciting voluntary use exposure and release information that is unlikely to be submitted in response to the TSCA Section 8(a) rule that is promulgated for any chemical or chemical group recommended for testing. In this 29th Report, the Committee is soliciting voluntary use exposure and release information for the one chemical and one chemical group recommended for testing and listed in Table 1.

To promote a comprehensive evaluation of recent physical and chemical property information similar to that requested in the 28th Report, the Committee is soliciting voluntary submission of this information for the one chemical and one chemical group recommended for testing and listed in Table 1. The Committee is soliciting voluntary submissions, because under 40 CFR 716.50, TSCA Section 8(d) studies of physical and chemical properties must be submitted only if they are performed for the purpose of determining the environmental or biological fate of a substance, and only if they investigated water solubility, adsorption/desorption on particulate surfaces, vapor pressure, octanol/water partition coefficient, density, dissociation constant, etc. The Committee recognizes that before chemicals are manufactured, many physical and chemical properties are measured (including those mentioned above, but also including flash point, melting point, boiling point, etc.), but not for the purpose of determining the environmental or biological fate of a substance. Member Agencies often need these physical and chemical properties that would not be developed as part of an environmental or biological fate assessment.

The Committee hopes that a voluntary approach for use exposure data and physical chemical property information will prove more efficient than pursuing notice-and-comment rulemaking under a TSCA section 8(a) Comprehensive Assessment Information Rule.

1.3.d Referrals. During this reporting period, the Committee did not refer any chemicals to Member Agencies or other organizations for testing consideration.

1.3.e Deferrals. The Committee is deferring 5-chloro-2-(2,4-dichlorophenoxy) phenol (CAS No. 3380-34-5), because of uncertainties related to testing under TSCA. Deferred and other chemicals are recycled through the Committee's computerized processes to identify chemicals whose production volumes have substantially changed.

1.3.f Removals. Six chemicals were removed from the Priority Testing List as a result of EPA responses to Committee recommendations. Five brominated flame retardants designated in the Committee's 25th Report were removed from the Priority Testing List on June 25, 1991 when EPA promulgated a Notice of Proposed Rulemaking. 4-Vinylcyclohexene, designated in the Committee's 26th Report was removed from the Priority Testing List on September 23, 1991 when EPA published a negotiated Consent Order.

In addition, the Committee is providing a complete list of 98 chemicals and 18 chemical groups that have been recommended and removed from the Priority Testing List since the ITC's 1st Report in October 1977 (Table 2). Reasons for removing chemicals from the Priority Testing List as well as the reference for the original Committee designation or recommendation are contained in the FR citations listed in Table 2. The Report numbers for the original Committee designation or recommendation are listed in Table 2. Reports have been consistently published every 6 months since October 1977. Table 2 reads as follows:

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Report	Chemical/Group	Citation	Publication Date
1	Alkyl epoxides	49 FR 449	January 4, 1984
1	Alkyl phthalates	46 FR 53775	October 30, 1981
1	Chlorinated benzenes (mono and di-health)	45 FR 48524	July 18, 1980
1	Chlorinated benzenes (mono and di-environmental)	49 FR 1760	January 13, 1984
1	Chlorinated paraffins	47 FR 1017	January 8, 1982
1	Chloromethane	45 FR 48524	July 18, 1980
1	Cresols	48 FR 31812	July 11, 1983
1	Hexachloro-1,3-butadiene	47 FR 58029	December 29, 1982
1	Nitrobenzene	46 FR 30300	June 5, 1981

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Re- port	Chemical/Group	Citation	Publication Date
1	Toluene	47 FR 56391	December 16, 1982
1	Xylenes	47 FR 56392	December 16, 1982
2	1,1,1-Trichloroethane	46 FR 30300	June 5, 1981
2	Acrylamide (health)	45 FR 48510	July 18, 1980
2	Acrylamide (environmental)	48 FR 725	January 6, 1983
2	Aryl phosphates	46 FR 57452	December 29, 1983
2	Chlorinated naphthalenes	46 FR 54491	November 2, 1981
2	Dichloromethane	46 FR 30300	June 5, 1981
2	Halogenated alkyl epoxides	48 FR 57695	December 30, 1983
2	Polychlorinated terphenyls	46 FR 54482	November 2, 1981
2	Pyridine	47 FR 58031	December 29, 1982
3	1,2-Dichloropropane	49 FR 899	January 6, 1984
3	Chlorinated benzenes (tri, tetra and penta-health)	45 FR 48524	July 18, 1980
3	Chlorinated benzenes (tri, tetra and penta-environmental)	49 FR 1760	January 13, 1984
3	Glycidols	48 FR 57562	December 30, 1983
4	4,4'-Methylenedianiline	48 FR 31806	July 11, 1983
4	Acetonitrile	47 FR 58020	December 29, 1982
4	Aniline and bromo-, chloro- or nitroanilines	49 FR 108	January 3, 1984
4	Antimony metal	48 FR 717	January 6, 1983
4	Antimony sulfide	48 FR 717	January 6, 1983
4	Antimony trioxide	48 FR 717	January 6, 1983
4	Cyclohexanone	49 FR 136	January 3, 1984
4	Hexachlorocyclopentadiene	47 FR 58023	December 29, 1982
4	Isophorone	48 FR 727	January 6, 1983
4	Mesityl oxide	48 FR 30699	July 5, 1983
4	Methyl ethyl ketone	47 FR 50025	December 29, 1982
4	Methyl isobutyl ketone	47 FR 58025	December 29, 1982
5	Benzidine-, o-dianisidine and o-tolidine based dyes	46 FR 55004	November 5, 1981
5	Hydroquinone	49 FR 438	January 4, 1984
5	Quinone	49 FR 456	January 4, 1984
6	Phenylenediamines	47 FR 973	January 8, 1982
7	Alkyltins	47 FR 5456	February 5, 1982
7	Butyl benzyl phthalate	46 FR 53775	October 30, 1981
7	Butyl glycolyl butyl phthalate	46 FR 54487	November 2, 1981
7	Fluoroalkenes	46 FR 53704	October 30, 1981
8	2-Chlorotoluene	47 FR 3596	January 26, 1982
8	Diethylenetriamine	47 FR 18386	April 29, 1982
8	Hexachloroethane	47 FR 18175	April 28, 1982
9	4-Chlorobenzotrifluoride	47 FR 50555	November 8, 1982
9	Chlorendic acid	47 FR 44878	October 12, 1982
9	Tris(2-chloroethyl) phosphite	47 FR 49466	November 1, 1982
10	1,2,4-Trimethylbenzene	48 FR 23088	May 23, 1983
10	Biphenyl	48 FR 23080	May 23, 1983
10	Ethyltoluene	48 FR 23088	May 23, 1983
10	Formamide	48 FR 23098	May 23, 1983
11	1,3-Dioxolane	48 FR 51839	November 14, 1983
11	4-(1,1,3,3-Tetramethylbutyl)phenol	48 FR 51971	November 15, 1983
11	Bis(2-ethylhexyl)terephthalate	48 FR 51845	November 14, 1983
11	Carbofuran intermediates	50 FR 29761	July 22, 1985
11	Dibutyltin bis(isooctyl maleate)	48 FR 51361	November 8, 1983
11	Dibutyltin bis(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Dibutyltin bis(laurel mercaptide)	48 FR 51361	November 8, 1983
11	Dibutyltin dilaurate	48 FR 51361	November 8, 1983

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Chemical/Group	Citation	Publication Date
11	Dimethyltin bis(isooctyl mercaptoacetate)	48 FR 5 361	November 8, 1983
11	Monobutyltin tris(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Monomethyltin tris(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Tris(2-ethylhexyl)trimellitate	48 FR 51824	November 14, 1983
12	2-Phenoxyethanol	49 FR 21407	May 21, 1984
12	Calcium naphthenate	49 FR 21411	May 21, 1984
12	Cobalt naphthenate	49 FR 21411	May 21, 1984
12	Lead naphthenate	49 FR 21411	May 21, 1984
12	Methylolurea	49 FR 21371	May 21, 1984
13	1,2,3,4,7,7-Hexachloronorborene	49 FR 45854	November 19, 1984
13	Diethyleneglycol butyl ether acetate	49 FR 45606	November 19, 1984
13	Ethylene bis(oxyethylene) diacetate	49 FR 45651	November 19, 1984
13	Oleylamine	49 FR 45610	November 19, 1984
14	1,2-Dibromo-4-(1,2-dibromoethyl)cyclohexane	50 FR 19460	May 8, 1985
14	2-Ethylhexanoic acid	50 FR 20678	May 17, 1985
14	3,4-Dichlorobenzotrifluoride	52 FR 23547	June 23, 1987
14	Bisphenol A	50 FR 20691	May 17, 1985
14	Diisopropylbiphenyl	50 FR 18920	May 3, 1985
14	Isopropylbiphenyl	50 FR 18920	May 3, 1985
15	9,10-Anthraquinone	50 FR 46090	November 6, 1985
15	Chloroprene	50 FR 29761	August 26, 1985
15	Cumene	50 FR 46104	November 6, 1985
15	2-Mercaptobenzothiazole	50 FR 46121	November 6, 1985
15	Octamethylcyclotetrasiloxane	50 FR 45123	October 30, 1985
15	Pentabromoethylbenzene	50 FR 46785	November 13, 1985
15	Sodium <i>N</i> -methyl- <i>N</i> -oleoyltaurine	50 FR 46178	November 6, 1985
16	Methylcyclopentane	51 FR 17854	May 15, 1986
16	Tetrabromobisphenol A	51 FR 17872	May 15, 1986
16	Triethylene glycol monobutylether	51 FR 27883	May 15, 1986
16	Triethylene glycol monoethylether	51 FR 27883	May 15, 1986
16	Triethylene glycol monomethylether	51 FR 27883	May 15, 1986
17	Diisodecyl phenyl phosphite	54 FR 8112	February 24, 1989
18	2,6-Di- <i>tert</i> -butylphenol	52 FR 23862	June 25, 1987
18	Cyclohexane	52 FR 19096	May 20, 1987
19	Disperse blue dye 79 (bromo ethoxy substituted)	54 FR 48102	November 21, 1989
19	Methylethyl ketoxime	53 FR 35838	September 15, 1988
19	Tributylphosphate	52 FR 43346	November 12, 1987
20	Disperse blue dye (chloro ethoxy substituted)	54 FR 48102	November 21, 1989
20	Disperse blue dye (chloro methoxy substituted)	54 FR 48102	November 21, 1989
20	Disperse blue dye 79:1 (bromo methoxy substituted)	44 FR 48102	November 21, 1989
20	Ethylbenzene	53 FR 46262	November 16, 1988
20	Isopropanol	53 FR 8638	March 16, 1988
20	Methyl <i>tert</i> -butyl ether	53 FR 10391	March 31, 1988
21	Acid blue 40	53 FR 18196	May 20, 1988
21	Acid blue 45	53 FR 18196	May 20, 1988
21	Acid form of Acid blue 40	53 FR 18196	May 20, 1988
21	Acid form of Acid blue 45	53 FR 18196	May 20, 1988
21	Disperse blue 56	53 FR 18196	May 20, 1988
21	Disperse red 60	53 FR 18196	May 20, 1988
22	1,6-Hexamethylene diisocyanate	54 FR 21240	May 17, 1989
23	Crotonaldehyde	54 FR 47062	November 9, 1989
25	1,2-Bis(2,4,6-tribromophenoxy)-ethane	56 FR 29140	June 25, 1991
25	Hexabromocyclododecane	56 FR 29140	June 25, 1991

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Chemical/Group	Citation	Publication Date
25	Pentabromodiphenyl ether	56 FR 29140	June 25, 1991
25	Octabromodiphenyl ether	5FR 29140	June 25, 1991
25	Decabromodiphenyl ether	56 FR 29140	June 25, 1991
26	4-Vinylcyclohexene	56 FR 47912	September 23, 1991

1.4 *The TSCA section 4(e) Priority Testing List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "... make such revisions in the [priority] list as it determines to be necessary and ... transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority Testing List by recommending one

chemical and one chemical group. These revisions are listed in Table 1.

The Priority Testing List (Table 3) includes 26 chemicals and 21 chemical groups designated, recommended with intent-to-designate or recommended for testing. Individual chemicals in Priority Testing List chemical groups are listed in Table 1 or the paragraph following Table 1 of this and previous Reports

with appropriate notes that minimize ambiguities related to TSCA section 8(a) and 8(d) reporting requirements. Tables 2 (Removals from the Priority Testing List) and 3 (the Priority Testing List) list the 124 chemicals and 39 chemical groups that have been recommended or designated for testing since the Committee's 1st Report in October 1977. Table 3 reads follows:

TABLE 3.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Date	Entry	Action
May 1988	Ethoxylated quaternary ammonium compounds	Recommended
May 1988	Imidazolium quaternary ammonium compounds	Recommended
November 1988	Tetrakis(2-chloroethyl)ethylene diphosphate	Recommended with intent-to-designate
November 1988	Tris(1,3-dichloro-2-propyl) phosphate	Recommended with intent-to-designate
November 1988	Tris(1-chloro-2-propyl) phosphate	Recommended with intent-to-designate
November 1988	Tris(2-chloro-1-propyl) phosphate	Recommended with intent-to-designate
November 1988	Tris(2-chloroethyl)-phosphate	Recommended with intent-to-designate
November 1988	Butyraldehyde	Recommended
November 1989	Brominated flame retardants	Recommended
May 1990	Isocyanates	Recommended with intent-to-designate
May 1990	Brominated flame retardants	Recommended
May 1990	Alkyl phosphates	Recommended
November 1990	Sodium cyanide	Designated
November 1990	Acrylic acid	Designated
November 1990	Acetophenone	Designated
November 1990	Phenol	Designated
November 1990	N,N-Dimethylaniline	Designated
November 1990	Ethylacetate	Designated
November 1990	2,6-Dimethylphenol	Designated
November 1990	Aldehydes	Recommended with intent-to-designate
November 1990	2,4-Dinitrophenol	Recommended
November 1990	3,4-Dimethylphenol	Recommended
November 1990	N-phenyl-1-naphthylamine	Recommended
November 1990	Sulfones	Recommended
November 1990	Substantially produced chemicals in need of subchronic tests	Recommended
May 1991	Acetone	Designated
May 1991	n-Butanol	Designated
May 1991	Isobutanol	Designated
May 1991	Di-(2-ethylhexyl)adipate	Designated
May 1991	Dimethyl terephthalate	Designated
May 1991	Thiophenol	Designated
May 1991	m-Dinitrobenzene	Recommended
May 1991	Allyl alcohol	Recommended
May 1991	2,4-Dichlorophenol	Recommended

TABLE 3.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Date	Entry	Action
May 1991	Alkynes	Recommended
May 1991	Nitroalcohols	Recommended
May 1991	Phosphoniums	Recommended
May 1991	Hydrazines	Recommended
May 1991	Oxirenes	Recommended
May 1991	Alkoxysilanes	Recommended
May 1991	Aldehyde hydrates	Recommended
May 1991	Propylene glycol ethers and esters	Recommended
May 1991	Methyl ethylene glycol ethers	Recommended
May 1991	Isothiocyanates	Recommended
May 1991	Cyanoacrylates	Recommended
November 1991	White phosphorus	Recommended
November 1991	Alkyl-, bromo-, chloro-, hydroxymethyl diarylethers	Recommended

Chapter 2—Recommendations of the Committee

2.1 Chemicals recommended for priority consideration by the EPA Administrator. As provided by section 4(e)(1)(B) of TSCA, the Committee is adding to the section 4(e) Priority Testing List one chemical and one chemical group (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the chemical testing data needs of Member Agencies.

2.2 Designated chemicals. None.

2.3 Recommended with intent-to-designate chemicals. None.

2.4 Recommended chemicals—2.4.a White phosphorus. White Phosphorus is recommended for testing based on concerns of the Department of Interior (DOI). DOI is concerned about and has few data on the persistence of white phosphorus in wetland sediments; the adverse effects of persistent white phosphorus to birds and wildlife that feed on sediments contaminated with white phosphorus; the potential for food chain effects and potential elimination of endangered species that may feed on carcasses of birds and wildlife that die from white phosphorus poisoning. The Department of Defense (DOD) is also concerned about the persistence and adverse effects of white phosphorus and has a task force that is developing a strategy for remediation of military sites contaminated with white phosphorus. The ITC is working with DOI and DOD to facilitate coordination of testing efforts and is aware of the Department of Transportation's regulation of white phosphorus as a flammable solid.

Summary of recommended studies. It is recommended that white phosphorus be tested for:

Chemical fate. Persistence in surface waters and sediments.

Health effects. None.

Ecological Effects. Toxicity to migratory birds and other wildlife.

White phosphorus

Physical and Chemical Information

CAS Number: 7723-14-0
 Synonyms: Yellow phosphorus
 Empirical Formula: P₄
 Molecular Weight: 123.9
 Physical State at 25 °C: Solid.
 Description of Chemical: Colorless off white waxy solid, cubic crystals that spontaneously inflame in air at 30 °C. (Ref. 32, Windholz et al., 1983)
 Melting Point: 44.1 °C
 Vapor Pressure: 0.023 torr 25 °C (Ref. 26, Spanggord et al., 1985) 1 atm at 76.6 °C (Ref. 3, Berkowitz et al., 1981)
 Specific Gravity: Not Applicable
 Log Octanol/Water Partition Coefficient: 1200 ± 100 (Ref. 26, Spanggord et al., 1985)
 Water Solubility at 25 °C: 4.1 mg/L (Ref. 26, Spanggord et al., 1985)
 Log K_{oc}: 2,400 (Ref. 17, Lyman et al., 1990)
 Henry's Law Constant: 2.1 × 10⁻³ atm m³ mole⁻¹ at 25 °C.

Rationale for Recommendations

A. Exposure information—Production/use/disposal/exposure/release. In 1990, approximately 700 million pounds of white phosphorus were produced (Ref. 5, CMR, 1991); 1991 production is expected to be 792 million lbs (Ref. 27, SRI International, 1991).

Direct use of P₄ is mainly restricted to military applications (Ref. 30, Van Wazer, 1982); however, white phosphorus is commercially available for other applications such as in rodenticides (Ref. 23, Sax and Lewis,

1987). Otherwise white phosphorus is converted to phosphorus sulfides, halides, phosphorus pentoxide, phosphoric acid, and red phosphorus. The major uses of phosphorus compounds are in detergents, in the food and beverage industry and as fertilizers.

B. Evidence for exposure—Human exposure. The NOES conducted during 1981-83 by NIOSH reported that 135,453 workers (8811 females) were exposed to white phosphorus at 7,697 production and use facilities involving 83 occupations in 86 industries. The OSHA Permissible Exposure Limit for occupational exposure to white phosphorus is 0.1 mg/m³ 8-hour Time Weighted Average.

C. Environmental exposure. Catastrophic waterfowl mortality has been observed in the Eagle River Flats firing range, a salt marsh in Cook inlet in Alaska. Careful study of dying birds indicated that white phosphorus residues were present in their fat, gizzard contents and other digestive tissues, liver, skin, and breast muscle. White phosphorus was also found in the sediments on which they were feeding. Other munitions-derived chemicals were also found, but not at levels high enough to cause death. Feeding studies at levels similar to those found in the sediment produced death (Ref. 21, Racine et al., 1991). Other sites of exposure would be manufacturing operations and munitions packaging facilities. Direct release occurs during the production of white phosphorus (Ref. 15, Idler, 1969) and during the manufacture and combustion of white phosphorus/felt smoke-producing devices (Ref. 2, Bentley et al., 1978). During deployment of munitions, about 10 percent of the white phosphorus is not oxidized; thus it is

available for release in the environment (Ref. 26, Spanggard et al., 1985).

Test firing of U.S. Army munitions, especially smokes, into marshy areas may have serious consequences to waterfowl inhabiting these areas. A memorandum from the Regional Contaminants Coordinator (Region 7 - Alaska) describing the problem of white phosphorus in Eagle River Flats contained the following description (Ref. 22, Robinson-Wilson, 1991):

White phosphorus is used in both flares and smokes by the U.S. Army. Shells are fired out over the impact area where they explode in the air, releasing the burning white phosphorus into the atmosphere. At ERF [Eagle River Flats], the falling particles of burning white phosphorus fall either onto snow or water, where they are quenched. Waterfowl, mainly dabbling ducks and swans, pick up white phosphorus particles during feeding. The particles are believed to have an oxidized coating and the birds are not exposed to the white phosphorus until the particles are ground up in their gizzards and released during digestion.

According to the TRI, 19,097 lbs were released to air, 11,569 lbs were discharged to water, 3,719,412 lbs were released to land, and 219,456 lbs were transferred to other off-site locations in 1988 (Ref. 29, TRI, 1991). In 1989, 16,174 lbs were released to air, 3,033 lbs were discharged to water, 3,291,402 lbs were released to land, and 85,573 lbs were transferred to other off-site locations (Ref. 29, TRI, 1991).

I. Chemical Fate Information

A. Persistence. In the few studies conducted near discharge sites, rapid dissipation out from the source was noted; however, it was determined in studies on the sediments from these locations that the surface deposits of a few parts per million probably oxidized quickly; whereas deeper deposits of higher concentrations could be stable for years (Ref. 1, Ackman et al., 1971; Ref. 26, Spanggard et al., 1985). This persistence is ascribed to the fact that most sediments are anaerobic a short distance below the surface. (Ref. 26, Spanggard et al., 1985; Ref. 8, Davidson et al., 1987; Ref. 28, Sullivan et al., 1979). This type of persistence is especially of concern to waterfowl which feed in these areas, since the particles of white phosphorus which are embedded in the sediment of the shallow water are believed to be ingested by ducks and swans.

B. Rationale for chemical fate testing. The U.S. Department of Interior is concerned about the fate of white phosphorus in sediments of a dabbling duck feeding environment. Release and persistence under these conditions is

only poorly understood and further testing is needed.

II. Health Effects Information

The Committee is not recommending health effects testing at this time because it wants to review non-public health effects studies that may be submitted in response to the TSCA section 8(d) rule that EPA will publish for chemicals in the ITC's 29th Report.

A. Metabolism and pharmacokinetics. White phosphorus is rapidly absorbed from the digestive tract of mice, rats, and rabbits (complete within 24 hours). When radioactive P_4 is administered, radioactivity accumulates primarily in the liver, kidney, lung, bone, and skeletal muscle (Ref. 4, Cameron and Patrick, 1966; Ref. 13, Ghoshal et al., 1971; Ref. 16, Lee et al., 1975). Elimination is mainly via urinary excretion as inorganic and organic phosphates; some fecal elimination also occurs (Ref. 4, Cameron and Patrick, 1966; Ref. 16, Lee et al., 1975). It does not appear that white phosphorus is absorbed from the lungs or skin of laboratory animals (Ref. 7, Dalhamn and Holma, 1959).

There is no direct pharmacokinetic information for humans, but absorption from the digestive tract can be inferred by toxicity data (Ref. 20, Polson et al., 1983). There is no convincing evidence that white phosphorus is absorbed as a result of exposure by inhalation or dermal contact (Ref. 8, Davidson et al., 1987).

B. Acute and subchronic (short-term) effects. White phosphorus is highly toxic to humans and laboratory animals exposed by the oral route. Oral LD_{50} values for male and female rats are 3.76 and 3.03 mg/kg, and for male and female mice, 4.85 and 4.82 mg/kg, respectively (Ref. 16, Lee et al., 1975). The estimated minimal lethal oral dose in humans is 50 mg (0.7 mg/kg), but 15 mg (0.2 mg/kg) may cause serious toxicity (gastrointestinal, liver, renal, cardiovascular, and CNS effects) (Ref. 25, Sollman, 1957; Ref. 18, McCarron et al., 1981; Ref. 9, Diaz-Rivera et al., 1950).

Acute inhalation LC_{50} values for rats and mice are 1,400 and 660 mg/m³, respectively. Because white phosphorus ignites spontaneously, (Ref. 30, Van Wazer, 1982), its contact with skin can cause serious burns. Dermal exposure of humans to white phosphorus via industrial accidents and on the battlefield has led to 3rd degree burns and death, massive hemolysis, and low plasma calcium (Ref. 31, Walker et al., 1947).

Young female rats fed diets containing median daily doses of white phosphorus of 0.075 mg/kg/day for 22 weeks showed

severely depressed weight gain and weight loss, leading to a final weight less than the starting weight. Male rats fed 0.0027 mg per kg per day showed fluctuations in growth prior to the 15th week, but from the 15th to 25th week of exposure growth was rapid and was 13 percent above that of controls by the 25th treatment week (Ref. 24, Sollman, 1925).

C. Genotoxicity. White phosphorus was negative in Ames/*Salmonella* tests when evaluated as an undiluted saturated solution in distilled water; a concentration of up to 100 μ L/plate in both the presence and absence of S9 fraction of liver did not induce increased incidence of mutations (Ref. 10, Ellis et al., 1978).

No data were located regarding the genotoxicity of white phosphorus in humans.

D. Chronic toxicity. Oral exposure of groups of 6 rats to 0.2, 0.4, 0.8, or 1.6 mg per kg per day of white phosphorus dissolved in peanut oil and mixed with stock diet for their lifetimes (up to 512 days) caused dose-related mortality. Retarded growth (effect level not reported) was believed due to inanition rather than systemic toxicity. Histopathological evaluation showed changes in the long bones (thickening of the epiphyseal line; extension of the trabeculae into the shaft). White phosphorus (0.05 mg per kg per day) dissolved in peanut oil and administered by subcutaneous injection to rats and guinea pigs for their lifetimes caused the same effects on bone, but to a lesser degree in the guinea pigs. Livers of these treated rats showed mild fatty degeneration, and lungs were also affected (bronchopneumonia, pneumonitis, bronchitis). These effects were not seen in guinea pigs (Ref. 11, Fleming et al., 1942).

Chronic exposure of humans to white phosphorus causes a characteristic lesion, necrosis of the jaw, which has been documented through numerous cases involving occupational exposure. In one study, the incidence of this condition was less than 5 percent of those exposed (Ref. 25, Sollman, 1957), and the estimated mortality rate from white phosphorus necrosis was about 20 percent, according to another study (Ref. 14, Hunter, 1969). Levels of exposure were not quantified.

E. Reproductive and developmental effects. Elemental yellow phosphorus was administered by gavage in corn oil to 8-week-old male and female rats in doses of 0, 0.005, 0.015, or 0.075 mg per kg per day for 80 days prior to mating, and continued through mating, gestation and lactation, then through a second

cycle from mating through lactation. Seven of the 30 high-dose females died during parturition, and hair loss was noted on both forelimbs of the high-dose males and females. No effects were seen on body weights or reproductive indices. No evidence of developmental toxicity was noted. The NOAEL was 0.015 mg per kg per day (Ref. 19, Monsanto, 1985).

No data were found on the reproductive or developmental toxicity of white phosphorus in humans.

III. Ecological Effects Information.

A. Acute and subchronic (short-term) effects. Both laboratory and field studies indicated that white phosphorus is highly toxic to aquatic organisms. The effluent from white phosphorus production contains both suspended and dissolved white phosphorus, and environmental release can occur from the combustion of munitions with remobilization from aquatic sediments as well as sinks in anaerobic soils. The LC₅₀ values for five freshwater fish species range from 2.4 to 73 µg/L; the most sensitive species is *Lepomis macrochirus*. The LC₅₀ values for five invertebrate species range from 30 to > 560 µg/L; the most sensitive species is *Daphnia magna*. Available LC₅₀ data for fish and invertebrates indicate that the toxicity of white phosphorus is cumulative. Single doses of 3 to 6 mg/kg have been reported to cause death in mallards and black ducks within 24 hours (Ref. 6, Coburn et al., 1950). A memo from the Regional Contaminants Coordinator (Region 7 - Alaska) describing the problem of white phosphorus in Eagle River Flats contained the following description (Ref. 22, Robinson-Wilson, 1991).

Birds typically go through protracted convulsions before death, indicating a possible nervous system involvement. Birds that are affected are often taken by bald eagles and/or gulls before they die. However, few bald eagles or gulls have been found dead on ERP [Eagle River Flats] to date. [one] bald eagle was found and subsequent analysis of tissues found that WP [white phosphorus] was present. Since no data are available on WP toxicity in raptors and since no data exists on transfer of WP between trophic levels, we cannot state that WP was the toxic agent, but all the circumstantial evidence points to WP as the toxic agent.

B. Chronic (long-term) effects. Chronic white phosphorus exposure in *Pimephales promelas* reduced survival at 1.5 µg/L, and hatchability was reduced at 0.4 µg/L. In studies with macroinvertebrates, exposure to 8.7 µg/L reduced survival in *Daphnia magna* (Ref. 8, Davidson et al., 1987).

C. Other ecological effects (biological, behavioral, or ecosystem processes).

The issue of wildlife toxicity was raised when it was discovered that a long-standing problem of waterfowl mortality at Eagle River Flats in Alaska was apparently being caused by the ingestion of particles of white phosphorus that had settled into marsh sediments. This has resulted in the death of 1000 to 2000 migratory dabbling ducks and 10 to 50 swans per year for the last 10 years (Ref. 21, Racine et al., 1991).

D. Bioconcentration and Food-chain transport. Bioconcentration in 3 species of fish ranged from 11.7 to 67.7 in muscle and from 51.5 to 2,000 fold in liver (Ref. 8, Davidson et al., 1987). In 6 species of invertebrates, bioconcentration ranged from 10.5 to 1,267 fold. In 2 species of seaweed the factor was 22.2 to 22.8 fold (Ref. 12, Fletcher, 1971).

E. Rationale for ecological effects testing recommendation. The U.S. Department of Interior is concerned about the toxicity of white phosphorus to migratory birds that seasonally reside on bodies of water containing white phosphorus particles in the water and in the sediment. Ecological effects testing is recommended because data are insufficient to reasonably determine or predict the toxicity of white phosphorus to migratory birds and other wildlife.

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2.4.b Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers. The Committee is recommending 14 alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers for physical chemical property, biodegradation rate, health effects and ecological effects screening tests. These

chemicals will allow the Committee to evaluate the persistence and toxicity of the diaryl ether substructure. Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are defined as any two aromatic rings joined by an oxygen (i.e., Ar-O-Ar where Ar is any aryl group) where there are alkyl, bromo, chloro or hydroxymethyl substituents on one or both of the aromatic rings or on a methyl group attached to one of the aromatic rings. One minor exception to this definition is an acetate ester of hydroxymethyl diaryl ether. This chemical was included because the Committee believed that the ester would be metabolized to the alcohol. The Committee is making this recommendation based on: (1) concerns for potential persistence and toxicity, (2) the paucity of publicly-available data for a majority of these chemicals, and (3) the need to carefully review any studies that may be submitted under TSCA section 8(d), before designating or withdrawing recommended testing for any of these diaryl ethers.

Several diaryl ethers were previously reviewed. Diphenyl oxide was previously nominated for oncogenicity testing by the National Cancer Institute's Chemical Selection Working Group. The chemical was not selected for testing, pending the results of industry testing (Helmets et al., 1983, Ref. 13). 1-Amino-4-hydroxy-2-phenoxy-9,10-anthraquinone was recommended in ITC's 21st Report. Penta-, octa- and decabromodiphenyl ethers were designated in the ITC's 25th Report. 3-Phenoxybenzaldehyde was recommended in the ITC's 27th Report. Benzenesulfonic acid, 4,4'-oxybis-, dihydrazide was recommended in the ITC's 28th Report.

The 14 chemicals being recommended at this time were selected from a TSCA Inventory group of 55 diaryl ethers that have the general formula Ar-O-Ar. Of the 55 diaryl ethers that were considered, all but 16 were eliminated on the basis of substructural characteristics which indicated they would be better considered along with other chemical groups such as xanthenes, anthraquinones, sulfonic acids, isoindoles, amino and nitro aromatics, etc. Nonabromodiphenyl ether was not recommended because the Committee wanted to review any data developed for bromodiphenyl ethers. 5-Chloro-2-(2,4-dichlorophenoxy) phenol was deferred because of pesticide uses.

The Committee hopes that manufacturers, processors, and users will voluntarily provide use, exposure, and release data not required under TSCA section 8(a). Uncertainties related to production, toxicity and persistence

may be clarified after the Committee's review of the data obtained from the automatic 8(a) and 8(d) rules.

Summary of recommended studies. Testing recommendations for the 14 diaryl ethers listed in the paragraph following Table 1 are summarized in Table 1.

Physical and Chemical Information

The Committee found limited information on measured physical and chemical properties for the diaryl ethers listed in the paragraph following Table 1: four boiling points, one log octanol/water partition coefficient, three melting points, one water solubility, and one vapor pressure (Ref. 1, Aldrich, 1988; Ref. 2, Ambrose et al., 1976; Ref. 4, Banerjee et al., 1980; Ref. 5, Bein, 1985; Ref. 9, Dean, 1985; Ref. 12, Hansch and Leo, 1985; Ref. 24, Weast, 1985).

Rationale for Recommendation

A. Exposure information—Production/use/disposal/exposure/release. The Committee believes that the diaryl ethers listed in the paragraph following Table 1 are commercially available, and that some of them may be produced in substantial quantities. Composite production volume for this group exceeds 70 million pounds; actual production volumes are confidential business information.

Alkyl diaryl ethers are used as heat transfer fluids, resins for laminated electrical insulators, chemical intermediates and antioxidants; the bromodiphenyl ether is used as an intermediate in production of pyrethroids; chlorodiphenyl ethers are used as bacteriostatic and preservative agents for cosmetics and detergents (Ref. 7, Chemcyclopedia 91, 1990; Ref. 8, Dagani, 1985; Ref. 11, Gusten et al., 1973; Ref. 18, Sax and Lewis, 1987). No use information was found for the hydroxymethyl diaryl ethers.

B. Evidence for exposure—Human exposure. The National Occupational Exposure Survey (NOES) conducted during 1981-83 by NIOSH reported that 90,789 workers were potentially exposed to diphenyl oxide in 24 industries and 145 workers were potentially exposed to 1-methyl-3-phenoxybenzene in business services (Ref. 16, NIOSH, 1989). Only diphenyl oxide has an OSHA Permissible Exposure Limit.

C. Environmental exposure. Diphenyl oxide has been detected in 1 of 14 treated drinking water supplies (Ref. 10, Fielding et al., 1981) and detected at concentrations of 69 and 388 µg/L in wastewater extract from the organics and plastics industry, 12 µg/L from the plastics and synthetics industry, 18 µg/L

from rubber processing industry, 30 and 38 µg/L from the soaps and detergents industry, 35 µg/L from the electronics industry, and 1620 µg/L in wastewater extract from the organic chemicals industry (Ref. 6, Bursey and Pellizzari, 1982). Diphenyl oxide has been identified in wastewater, river and estuary water, and river, estuary and bay sediment (Ref. 14, Hites and Lopez-Avila, 1980).

I. Chemical Fate Information

The Committee searched published and unpublished chemical fate literature and found that there were studies on only one of the recommended diaryl ethers. In acclimated river water, diphenyl oxide (23.8 mg/L initial concentration) exhibited approximately 20 percent biodegradation under aerobic conditions during an 80 day incubation period (Ref. 15, Ludzack and Ettinger, 1963). In a review, diphenyl oxide was characterized as "unlikely to be removed during biological sewage treatment even after prolonged exposure" (Ref. 19, Thom and Agg, 1975). A degradation half-life in soil of 11 days was estimated from analysis of percolate groundwater samples; biodegradation is expected to be the primary fate process contributing to environmental degradation (Ref. 25, Zoeteman et al., 1981).

Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are recommended for physical and chemical property and biodegradation rate screening tests because there are insufficient data to reasonably determine or predict environmental persistence.

II. Health Effects Information

A search of published and unpublished health effects literature revealed that there were studies on six of the recommended diaryl ethers. The majority of health effects studies were published on diphenyl oxide or mixtures containing diphenyl oxide including: 18 oral, dermal and inhalation acute toxicity studies on 5 mammalian species (Ref. 17, RTECS 1991, Ref. 22, TSCATS 1991); 6 oral and inhalation prechronic studies on 3 mammalian species (Ref. 20, TOXLINE 1991); 9 genotoxicity studies, including those on mutagenicity in bacteria and yeast (Ref. 20, TOXLINE 1991, Ref. 22, TSCATS 1991), negative cytogenetics in hamsters (Ref. 22, TSCATS 1991), and DNA effects in rats (Ref. 22, TSCATS 1991); 1 negative developmental toxicity study in rats that used 77 percent diphenyl oxide and 33 percent biphenyl as the test substance (Ref. 20, TOXLINE 1991); 1 positive developmental toxicity study in sea

urchins (Ref. 20, TOXLINE); and 3 oral and intraperitoneal pharmacokinetics studies in rats (Ref. 20, TOXLINE 1991).

For the other five diaryl ethers recommended for testing [benzene, 1-methyl-3-phenoxy-; benzenemethanol, 3-phenoxy-; benzene, 1,1'-oxybis[methyl-; 1,1'-biphenyl, phenoxy-; benzene, 1(bromomethyl)-3-phenoxy-], there were 7 oral and dermal acute toxicity studies on 4 mammalian species (Ref. 20, TOXLINE 1991, Ref. 21, TOXLIT 1991, Ref. 17, RTECS 1991); 2 prechronic studies in rats (Ref. 22, TSCATS 1991, Ref. 20, TOXLINE 1991); and six genotoxicity studies, including those on mutagenicity in bacteria and cytogenetics in mice (Ref. 21, TOXLIT 1991, Ref. 20, TOXLINE 1991).

Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are recommended for health effects screening tests (except for diphenyl oxide) because there are insufficient data to reasonably determine or predict health effects.

III. Ecological Effects Information

Except for acute aquatic toxicity data for diphenyl oxide (LC₅₀ values ranged from 3 to 4 mg/L for freshwater fish and 0.67 to 1.4 mg/L for freshwater invertebrates, Ref. 3, AQUIRE 1991) and 3-phenoxy-benzenemethanol (EC₅₀ values ranged from 1.4 to 95.0 mg/L for freshwater algae, Ref. 3, AQUIRE 1991), no ecological effects testing information was located for the other 12 diaryl ethers.

Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are recommended for ecological effects screening tests because there are insufficient data to reasonably determine or predict ecological effects.

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[FR Doc. 91-31157 Filed 12-27-91; 8:45am]

BILLING CODE 6560-50-F

The first of these is the fact that the
government has been unable to
maintain a stable currency.
This has led to a loss of confidence
in the government and a consequent
fall in the value of the currency.
The second is the fact that the
government has been unable to
maintain a stable economy.
This has led to a loss of confidence
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The third is the fact that the
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Federal Register

**Monday
December 30, 1991**

Part X

Department of Health and Human Services

Food and Drug Administration

**21 CFR Chapter I
Withdrawal of Certain Pre-1986 Proposed
Rules**

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Chapter I****[Docket No. 91N-0300]****Withdrawal of Certain Pre-1986 Proposed Rules; Final Action****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) announces that it is withdrawing 89 proposed rules that were published in the *Federal Register* on or before December 31, 1985. In many cases, these proposals have been superseded by subsequent actions or events or no longer reflect the agency's regulatory objectives or priorities. In other cases, sufficient time has elapsed that it would be appropriate to publish a new proposal or tentative final rule before proceeding to final action. Accordingly, the agency concludes, after considering the public comments submitted in response to a notice published in the *Federal Register* of August 28, 1991 (56 FR 42778) announcing its intent to withdraw 115 proposed rules, that further action to issue final rules based on 89 of these proposals is not warranted, and that the proposals should be formally withdrawn. The agency also announces that it is deferring a decision on withdrawal of 26 of the 115 proposals listed in that notice of intent.

DATES: The proposed rules are withdrawn on December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Office of Policy, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:**I. Introduction**

In the *Federal Register* of August 28, 1991 (56 FR 42668), FDA announced that it had begun a comprehensive review of the agency's regulations process, including a review of the backlog of advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices for which no final rule or notice of withdrawal has been issued. The review was begun partly in response to criticism that the agency's backlog of pending proposals dilutes the agency's ability to concentrate its attention on higher priority regulations mandated by statute or necessary to protect public health.

As a first step, FDA reviewed all of the proposals that the agency published in the *Federal Register* prior to December 31, 1985, but for which no final rules or notices of withdrawal have been published. The agency then tentatively concluded that 115 of these pre-1986 proposals should be withdrawn. The August 28, 1991, notice of intent (hereafter referred to as the notice of intent) identified these 115 pre-1986 proposals and invited interested persons to submit comments on FDA's intent to withdraw these proposals.

FDA received 34 written comments regarding the agency's intent to withdraw the 115 pre-1986 proposed rules. These comments were from a member of Congress, consumer organizations, trade associations, professional associations, law firms, consultants, individuals and commercial organizations. The comments generally supported the agency's efforts to withdraw the pre-1986 proposals; however, the comments requested additional procedures to provide for increased opportunity for public comment on the proposed withdrawals. Many of the comments concerned one or more of the specific proposals identified for withdrawal in the notice of intent. The comments specifically addressed 30 of the 115 proposals listed in the notice of intent; no specific comments were received regarding the other 85 proposals listed in the notice. The agency is deferring action on 9 of the 85 proposals on which no comments were received as well as 17 of the proposals on which comments were received.

The following is a summary of the comments received and the agency's response to these comments.

II. Summary of and Responses to Comments**A. General Comments**

1. Six of the comments submitted expressed general support for FDA's action to withdraw pre-1986 proposed rules that have low priority or are outdated. One of these comments suggested that FDA consider the withdrawal of any proposal that is more than 4 years old because, with the advances being made in understanding the toxicology of chemical substances, issues more than 4 years old may well be scientifically and technically outdated. Another comment stated that, because of the long time that elapsed since the proposals were published, circumstances require a reexamination of these proposals to determine whether they are relevant and whether the factual basis and applicable science and policy still apply. Still another of these

comments suggested that, in the future, FDA should not initiate proposed rulemaking unless it intends to complete the rulemaking in a timely manner.

As noted in the preamble to the notice of intent (56 FR 42668), FDA agrees that many of these pre-1986 proposals have become outdated in the time that has elapsed since their publication and that, before the agency could proceed further, it would be necessary to reexamine the factual and scientific bases for the proposals, the agency would publish a new proposal or tentative final rule before proceeding to final action.

The agency disagrees, however, with the comment that the agency should consider withdrawing a proposal solely on the basis of age, e.g., if it is more than 4 years old. Although the amount of time that has elapsed since publication of the proposal should be one of the criteria used in an initial screening of proposals for consideration to withdraw, a final decision to withdraw a proposal or to proceed to final rulemaking must address other factors including, but not limited to, statutory requirements and the public health.

The agency also agrees in principle with the comment that the agency should not initiate proposed rulemaking unless it intends to complete the rulemaking in a timely manner. Although the need for a particular rule may change with changes in the circumstances that caused the agency to initiate the rulemaking proceeding, the agency intends in the future to adhere to the general principle that any rulemaking activity important enough to initiate is important enough to be accompanied by a plan, timetable, and agency-level commitment sufficient to ensure its timely completion. This goal of timely completion includes not only the promulgation of a final rule but also recognizing when the time has come to withdraw a proposal.

2. One comment asked that FDA clarify that it is not disavowing any positions or standards established in the proposed rules the agency intends to withdraw.

Preambles to proposed rules are advisory opinions under 21 CFR 10.85(d) until they are amended or revoked. The agency's withdrawal of the pre-1986 proposals listed below constitutes a revocation of these preambles as advisory opinions under 21 CFR 10.85(g). As FDA acknowledged in the notice of intent, some of the withdrawn proposals still reflect current agency views and thus may still provide useful guidance. However, the withdrawn proposals no longer necessarily represent the formal position of FDA, and do not bind or

otherwise obligate or commit the agency to the views expressed. Interested persons who believe that guidance provided in the preambles to the withdrawn proposals should be restated in the form of an advisory opinion should submit a request for an advisory opinion as provided in 21 CFR 10.85.

3. One comment asked that FDA reconsider the approach taken in inviting public comment on the agency's notice of intent to withdraw proposed rules. The comment suggested that FDA should describe the substance of the proposal at issue so that the public could intelligently comment on the agency's action. Another comment stated that the mere publishing of the titles and other references provides little assistance to persons reviewing the list of pre-1986 proposals, particularly where some of the proposals were more than 30 years old. This comment suggested that it would have been helpful if FDA had included brief summaries of the essence of the proposals on the withdrawal list, and possibly the reasons for their proposed withdrawal.

The notice of intent identified each of the proposals being considered for withdrawal by title, docket number, and the *Federal Register* publication date and cite. The agency believes that, in almost all cases, the title described the substance of the proposed rule sufficiently to allow readers to make an initial determination as to whether the proposed withdrawal might affect an issue in which they were interested. Any interested person could obtain additional, detailed information by reading the specific proposal in the cited *Federal Register* issue.

In addition, to assist persons interested in obtaining additional information about a certain proposal, the agency included in the notice the name, address, and telephone number of an agency contact. This employee was prepared to answer any questions and to provide copies of each of the listed proposals upon request.

The agency considered providing more information concerning the substance of each of the 115 proposals in the notice of intent. FDA believed, however, that persons interested in commenting would want to read the underlying proposals themselves, regardless of how detailed a summary the agency had provided in the notice of intent. In the end, the agency decided to move ahead with this initiative to reduce the backlog of pre-1986 proposals in a manner it judged to be efficient, expeditious, and more than adequately protective of the interests of affected parties. Based on the comments

received, it appears that interested persons understood the intent of the notice and were able to formulate comments addressing their concerns.

Any person who believes that the subject of a withdrawn proposal still should be addressed by regulation is free to petition the agency to recommend rulemaking. Any such petition must be in accordance with § 10.30 (21 CFR 10.30) or other applicable FDA procedure and must present the legal, factual, and public health rationale for devoting FDA resources to the promulgation of such a rule.

4. One comment recommended that FDA make copies of the proposals listed in the notice of intent available to the public for a period of 1 year before removing the proposed regulations. Alternatively, the comment requested that the comment period for eight specific proposals remain open for a period of not less than 90 days to allow interested persons to review the substance of the proposals and present comments if appropriate.

Copies of all of the proposals listed in the notice of intent have been available to the public at all times since the documents were published in the *Federal Register*. Any member of the public may visit FDA's Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, and review and/or obtain copies of all proposed rules, received comments, and other reference materials. After reviewing these documents, interested persons may submit comments on the proposals or on the received comments.

Because the 115 proposals listed in the notice of intent to withdraw have been available to the public for more than 5 years, and in some cases for more than 25 years, the agency believes that it would unnecessarily delay final action to withdraw these pre-1986 proposals the comment period was extended as requested in the comment.

5. One comment stated that it is not appropriate to withdraw a proposed rule simply because it is more than 6 years old and has not been designated as high priority. The comment added that each proposal should be considered independently, to be pursued if it has merit and withdrawn if it does not.

The proposals listed in the notice of intent were not proposed for withdrawal simply because they were published in the *Federal Register* before 1986. Each of the pre-1986 proposals, including those that were not included in the notice of intent, was reviewed on its merits by the appropriate program officials in each of FDA's Centers, by the Office of the

General Counsel, and by other senior agency officials. The intent of the notice was not to withdraw proposed rules simply on the basis of age. Although the notice was confined to announcing the agency's intent to withdraw only proposed rules that had been published prior to 1986, the date of publication was not the sole or most important criterion for inclusion in the notice.

The agency had initially identified a larger number of pre-1986 proposals, all of which were considered for withdrawal. Where reviewers determined that further agency action to issue a final rule based on the pre-1986 proposal might be appropriate, the proposal was deleted from the list of proposals included in the notice of intent. Only those pre-1986 proposals that the agency found not to warrant the issuance of a final rule based on the proposal were included in the final list published in the notice of intent.

B. Specific Comments

The agency received specific comments concerning 30 of the 115 proposals listed in the notice of intent. These comments generally supported FDA's action to withdraw 11 of these 30 proposals and objected to FDA's action to withdraw 19 of these 30 proposals.

The specific comments received regarding these 30 proposals and the agency's response are as follows:

1. Methyl Salicylate; Oil of Wintergreen; Notice of Proposal to Establish Tolerance for Residues—Docket No. 91N-0301—September 26, 1962, 27 FR 9521.

One comment supporting the withdrawal of this proposal argued that data demonstrate that methyl salicylate is generally recognized as safe (GRAS) under its intended conditions of use, that FDA is fully justified in withdrawing this 1962 proposal, and that no further action is warranted.

FDA is withdrawing this proposal. Although FDA agrees that the proposal should be withdrawn, the agency's decision is not based on the merits of the argument that methyl salicylate (oil of wintergreen) is GRAS. The agency has not yet made such a determination. The agency's decision to withdraw this 1962 proposal is because the agency would initiate new notice and comment rulemaking before proceeding further in any determination concerning the GRAS status of methyl salicylate. The agency would not issue a final rule based solely on the proposal, which was issued almost 30 years ago.

2. Xylitol; Proposed Revocation of Food Additive Regulation—Docket No. 89-0421—October 20, 1971, 36 FR 20306.

One comment from a commercial organization stated that the firm previously had an interest in this product for many years and had made a number of submissions to the Agency in connection with this proposed rule to revoke the food additive regulation providing for the use of xylitol in foods for special dietary use. The comment added that the firm no longer has a commercial interest in this product and supports withdrawal of the 1971 proposal. The comment suggested, however, that FDA should consider revising 21 CFR 172.395 to include additional uses of xylitol in candies, chewing gums, jams, and jellies.

FDA has decided to defer a decision as to whether this proposal should be withdrawn. Although the only comment received regarding this specific proposal supports the agency's initial decision to withdraw it, the agency has reconsidered the issues involved. In a future issue of the Federal Register, FDA will either publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

3. Legal Status of Approved Labeling for Prescription Drugs; Prescribing for Uses Unapproved by the Food and Drug Administration—Docket No. 91N-0312—August 15, 1972, 37 FR 16503.

After further examination of this proposal, the agency, on its own initiative, has decided not to withdraw this proposed rule at this time. Although the agency does not intend to proceed to a final rule on the basis of this 1972 proposed rule, the agency has established an Unlabeled Use Task Force to examine the promotion and use of prescription drugs for indications not included in their approved labeling. (The agency's position concerning the veterinary use of human drugs is set forth in Compliance Policy Guide 7125.35 "Human Drugs Distributed to Veterinarians for Animal Use.") Therefore, the agency will defer consideration on the withdrawal of this proposed rule until after the task force has completed its review.

4. Infant Foods; Percentage Declaration of Ingredients—Docket No. 76P-03290—September 7, 1976, 41 FR 37595; and,

5. Infant and Junior Foods; Establishment of Common or Usual Name—Docket No. 76P-0330—September 7, 1976, 41 FR 37593.

One consumer organization objected to the withdrawal of these two proposed rules to require percentage-ingredient labeling of baby foods and a percentage declaration of the characterizing ingredient(s) as part of the common or usual name of such foods. The comment

urged FDA to finalize these two proposals instead of rescinding them.

FDA does not intend to issue final rules on the basis of these two proposals and, therefore, has decided to withdraw the proposed rules. As noted in the preamble to the notice of intent (56 FR 42668), this action does not mean that the agency has no interest in the issues concerning percentage-ingredient labeling of baby foods. The agency is in the process of reviewing and revising all food labeling, in part in response to the Nutrition Labeling and Education Act of 1990. If the agency decides to proceed further to require percentage-ingredient labeling for baby foods, it will do so through new notice and comment rulemaking.

6. Saccharin and Its Salts—Docket No. 76N-0510—January 7, 1977, 42 FR 1486; and,

7. Saccharin and Its Salts—Docket No. 77N-0085—April 15, 1977, 42 FR 19996.

Two comments supported the withdrawal of these two proposals. The first proposal was to amend the interim food additive regulation for saccharin and its salts to establish a tolerance for toluenesulfonamide of 25 parts per million. The second proposal would ban the use of saccharin and its salts in foods, drugs, and cosmetics. These comments asserted that the safety of saccharin is no longer of concern and that these 1977 proposals have become outdated. One comment from a consumer organization asked the agency to keep the docket on these two proposals open for at least 90 days to allow for additional public comments if appropriate.

While not addressing the issue concerning the safety of saccharin and its salts, the agency has decided to withdraw these two proposals. The Saccharin Study and Labeling Act enacted on November 23, 1977, prohibited for 18 months any new regulations restricting or banning the sale of saccharin or products containing it. Congress has extended the legislative moratorium several times. Most recently, it was extended to May 1, 1992. Even if it were not extended further, the agency would have to consider any new data concerning the safety of saccharin and its salts and initiate new rulemaking proceedings prior to taking any action to alter the regulatory status of saccharin. This decision to withdraw these two 1977 proposals does not preclude the agency from reproposing a ban or other restrictions on the use of saccharin and its salts at a later date should such action be warranted.

8. Over-the-Counter Drugs; General Conditions for Use and Labeling of

Inactive Ingredients—Docket No. 77N-0010—April 12, 1977, 42 FR 19156.

One comment objected to FDA's proposal to withdraw this proposal to amend regulations which establish the general conditions for use of inactive ingredients in over-the-counter (OTC) drug products so that these products are generally recognized as safe, effective, and not misbranded. The comment stated that the proposed rule has become an industry standard for the 15 years since it was first proposed. The comment added that inactive ingredient manufacturers and users have a problem with uncertainty as to the regulatory status of inactive ingredients that will be exacerbated if the proposed rule is withdrawn.

FDA concludes that the proposed rule should not be withdrawn at this time. FDA agrees with the comment that the principles set forth in the proposed rule have utility and should be retained in some manner. The agency intends to reevaluate the issues addressed in the proposed rule and determine whether to proceed with the rulemaking, repropose the requirements and provide new opportunity for comment, or to withdraw the proposed rule.

9. Ionizing Radiation Therapy Equipment; Notice of Intent to Propose Rules and Develop Guidelines—Docket No. 77N-0031—March 22, 1977, 42 FR 15428;

10. X-Ray Intensifying Screens; Intent to Develop a Radiation Protection Recommendation—Docket No. 78N-0074—June 2, 1978, 43 FR 24066;

11. Diagnostic Ultrasound Equipment; Intent to Propose Rules and Develop Regulations—Docket No. 78N-0288—February 13, 1979, 44 FR 9542; and

12. Procedures to Minimize Medical X-Ray Exposure of the Human Embryo and Fetus; Recommendations for Medical Radiation Exposure of Women of Childbearing Potential—Docket No. 75N-0340—November 20, 1979, 44 FR 66616.

Two professional associations supported FDA's action to withdraw these four proposals for which final rules were never developed. One of these comments stated that other FDA regulations and Nuclear Regulatory Commission regulations have significantly improved radiation equipment safety and superseded the need to develop regulations concerning ionizing radiation therapy equipment.

The agency agrees that these four proposals, three of which were only announcements of FDA's intent to issue proposed rules, should be withdrawn. If the agency decides that rulemaking is

required in the future, it will initiate new proceedings.

13. Butylated Hydroxytoluene; Use Restrictions—Docket No. 77N-0003—May 31, 1977, 42 FR 27603.

One consumer organization urged FDA to ban the use of the food preservative butylated hydroxytoluene (BHT) until its safety has been established. The comment stated that conflicting and inconclusive studies regarding BHT's safety demand that FDA reappraise the safety of this food additive.

The agency is deferring a decision as to the withdrawal of this proposal. Although the 1977 proposal would have restricted the use of BHT as a direct and indirect food additive and not have banned the use of BHT as requested in the comment, the agency is in the process of reviewing the conflicting data and information it has received concerning the safety of BHT. After further review of this data and information concerning the safety of BHT, the agency will either initiate a new rulemaking proceeding or withdraw the 1977 proposal.

14. New Drugs for Investigational Use; Prompt Reporting of Animal Studies and Data—Docket No. 77N-0059—July 15, 1977, 42 FR 36490.

One consumer organization asked that FDA keep the docket on this proposal open for at least 90 days to allow the organization and other interested parties to review the substance of the proposal and present comments if appropriate.

The agency has decided to withdraw this proposed rule. The proposal was intended to ensure prompt reporting of animal studies and data following the submission of an investigational new drug application. The proposed requirements are superseded by the existing regulations at 21 CFR Part 312—Investigational New Drug Applications. Requirements for reporting of animal studies and data are set forth under §§ 312.23(a)(8), 312.32, and 312.33.

15. Skim Milk Cheese for Manufacturing; Proposal to Amend Identity Standard—Docket No. 77P-0071—October 4, 1977, 42 FR 53979.

One consumer organization asked that FDA keep the docket on this proposal open for at least 90 days to allow the organization and other interested parties to review the substance of the proposal and present comments if appropriate. The commercial organization that filed the petition on which this proposal was based did not submit comments on the notice of intent to withdraw this proposal.

The agency has decided to withdraw this 1977 proposal to amend the identity standard for skim milk cheese for

manufacturing. The amendment would have provided for the use of skim milk cheese in producing lower fat cheese products. The agency's decision to withdraw the proposal is based primarily on the time that has elapsed since the proposal was issued and the apparent lack of interest on the part of the petitioner to pursue this action. In addition, circumstances have changed with the publication on November 27, 1991, of a proposed amendment to FDA's standard of identity regulations that will reduce regulatory barriers to the marketing of low fat substitutes for standardized cheese products (56 FR 60512). The agency's decision to withdraw the proposal does not, however, address the merits of the use of skim milk cheese in producing lower fat cheese products. If the agency, on its own initiative or in response to a new petition, decides that an amendment to the food standards regulations is warranted, it will initiate new rulemaking proceedings.

16. Sorbic Acid and Its Salts; Proposed Affirmation and Deletion of GRAS Status—Docket No. 77G-0379—March 10, 1978, 43 FR 9823.

One commercial organization urged the agency to complete this proposed rulemaking to affirm potassium sorbate and sorbic acid as GRAS as direct human food ingredients, to delete calcium and sodium sorbates from the GRAS list, and to amend the standards of identity for some cheeses, fruit jellies, jams and preserves, and margarine. The comment argued that sufficient scientific data were submitted to FDA on the safety of sorbic acid and its potassium salt during the rulemaking to enable the agency to affirm the GRAS status of these direct food additives for use as chemical preservatives. The firm stated that it was unaware of any new safety information on the calcium and sodium salts or on the stability of the sodium salt of sorbic acid to alter the agency's earlier conclusion that the GRAS status of calcium and sodium sorbates should be revoked.

The agency has reconsidered the issues involved in the agency's GRAS review program and has decided to defer a decision as to whether this proposal should be withdrawn. In a future issue of the *Federal Register*, FDA will publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

17. Ethylene Oxide, Ethylene Chlorohydrin, and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Daily Levels of Exposure—Docket No. 77N-0424—June 23, 1978, 43 FR 27474.

Two comments from commercial organizations objected to FDA's action to withdraw this proposal to impose restrictions on the continued use of ethylene oxide as a sterilant for certain drug products and medical devices for human use. The comments stated that this proposed rule is commonly used by medical device manufacturers as a guideline for product residual levels and patient exposure limits. The comments also stated that elimination of this guidance would not only serve to create chaos in the regulatory review process (both domestic and international) and in product development activities as well. The comments urged FDA to maintain its acceptance of the 1978 residue limits until such time as appropriate guidance documents can be issued. One of these comments, noting the shortcomings of the 1978 proposal, suggested that the International Standards Organization document developed by ISO/TC 198 and ISO/TC 194, "Sterilization of Health Care Products," be used as a reference document for establishing product residual levels.

FDA has decided to defer its decision to withdraw this proposal. The agency is evaluating toxicological studies on the effects of ethylene oxide residuals conducted subsequent to the issuance of the proposal. In addition, FDA is considering the utility of international standards already being proposed in this area as an alternative to promulgation of an agency rule. The decision concerning the necessity of an FDA rule will await the outcome of that process which is not expected to be completed until early 1993. Therefore, FDA's decision to issue a final rule based on the proposal and the received public comments; to repropose the rulemaking proceeding based on the toxicological studies conducted subsequent to the issuance of the proposal; or to withdraw the proposal will be announced in a future issue of the *Federal Register*.

18. Common or Usual Names for Vegetable Protein Products and Substitutes for Meat, Seafood, Poultry, Eggs, or Cheese Which Contain Vegetable Protein Products as Sources of Protein; Tentative Final Rule—Docket No. 75N-0205—July 14, 1978, 43 FR 30472.

One trade association supported FDA's announced intent to withdraw this tentative final regulation to establish common or usual names for all use of vegetable protein products. The comment stated that 13 years of experience, in which significant advances have been made in the utilization of soy proteins, have

reconfirmed that the tentative final regulation is not workable (in whole) or desirable.

Without addressing the merits of the comment, FDA agrees that the tentative final rule should be withdrawn. The agency's decision to withdraw this 1978 tentative final rule is based on the time that has elapsed since publication of the tentative final rule. If the agency determines that rulemaking is warranted, it will initiate a new proceeding.

19. Tocopherols and Derivatives; Proposed Affirmation of GRAS Status for Certain Tocopherols and Removal of Certain Others from GRAS Status as Direct Human Food Additives—Docket No. 78N-0213—October 27, 1978, 43 FR 50193.

Three comments supported the agency's action to withdraw this proposal to affirm the GRAS status of certain tocopherols and derivatives as direct human food ingredients and to remove certain other tocopherols and derivatives from GRAS status as direct human food ingredients provided that this withdrawal does not constitute a finding that these tocopherol forms are not GRAS as human food ingredients.

The agency has reconsidered the issues involved in the agency's GRAS review program and has decided to defer a decision as to whether this proposal should be withdrawn. In a future issue of the *Federal Register*, FDA will either publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

20. Cellulose Derivatives; Affirmation of GRAS Status—Docket No. 78N-0144—February 23, 1979, 44 FR 10751.

Four comments objected to FDA's intent to withdraw this proposal to affirm the GRAS status of cellulose derivatives and urged FDA to complete the rulemaking proceeding. These comments stated that sufficient data have been submitted to establish the safety of cellulose and to allow the agency to issue a final rule affirming the GRAS status of cellulose derivatives.

The agency has reconsidered the issues involved in the GRAS status of cellulose derivatives and has decided to defer a decision as to whether this proposal should be withdrawn. Among the issues that the agency is considering is whether dioxins or furans that may be formed during the bleaching of cellulose for paper may be present in cellulose or cellulose derivatives intended for food additive use. In a future issue of the *Federal Register*, FDA will either publish a final rule based on the proposal, repropose the amendment in a new

rulemaking proceeding, or withdraw the proposal.

21. Requirements for Estrogen Labeling Directed to Patients—Docket No. 78N-0303—April 17, 1979, 44 FR 22752.

One consumer organization asked that the docket for this proposal remain open for at least 90 days to allow interested persons to review the substance of the proposal and present comments if appropriate to the FDA.

FDA is withdrawing this proposal. This proposed rulemaking would have exempted distribution of estrogen patient warning labeling to male patients and would have allowed distribution of the labeling after administration of the drug when, at the time of administration, the patient is unable to read and understand the labeling because of impaired consciousness. The agency has seen no sustained interest in this issue from physicians or pharmacists. If the agency in the future decides that a regulation is required, it will initiate a new rulemaking proceeding.

22. Lakes of Color Additives; Intent to List—Docket No. 79N-0043—June 22, 1979, 44 FR 36411.

Two trade associations and an individual objected to FDA's announced intent to withdraw this 1979 advance notice of proposed rulemaking announcing its intention to propose regulations concerning lakes of color additives. The comments argued that substantial years of work by the industry to resolve issues concerning this matter with FDA would be wasted if the proceeding were substantially delayed. One comment argued that agency action concerning the issue is one that must eventually be addressed in a rulemaking proceeding.

The agency has decided not to withdraw this advance notice of proposed rulemaking at this time.

23. Caffeine; Deletion of GRAS Status; Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study—Docket No. 80N-0418—October 21, 1980, 45 FR 69817.

One consumer organization opposed rescission of this proposal that would, among other things, delete caffeine used as an added food ingredient from the list of substances that are GRAS and declare that no prior sanction exists for the use of caffeine as an added food ingredient. The comment stated that there is evidence to suggest that the consumption of caffeine interferes with reproduction and urged FDA to revive its program to alert pregnant women to the dangers proposed by caffeine.

The agency agrees that the proposal should not be withdrawn at this time. The Agency will defer its decision until such time as it has reviewed all data and information it has received concerning the safety of caffeine. The agency then will either issue a final rule based on the proposal and the received comments, repropose a rule concerning the use of caffeine as a food ingredient, or withdraw the proposal.

24. Ascorbic Acid and Its Sodium and Calcium Salts, Erythorbic Acid and Its Sodium Salt, and Ascorbyl Palmitate; Proposed Affirmation of GRAS Status and Removal of Calcium Ascorbate From the List of GRAS Ingredients—Docket No. 82N-0246—January 14, 1983, 48 FR 1735.

One commercial organization suggested that this proposal to affirm that ascorbic acid and sodium ascorbate, its sodium salt; erythorbic acid and sodium erythorbic acid and sodium erythorbate, its sodium salt; and ascorbyl palmitate are GRAS as direct human food ingredients not be withdrawn. This comment added that this proposal remains the most recent FDA statement that the agency regards sodium erythorbate as GRAS and asked that the proposal not be withdrawn until further action by FDA with respect to GRAS affirmation of erythorbates. One other commercial organization stated that, although it would not object to the withdrawal of this proposal, if the agency decides at some point to reinstate the GRAS affirmation procedure for these ingredients, the agency should consider the comments submitted to the agency in response to the original proposal.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the *Federal Register*.

25. Biotin; Proposed Affirmation of GRAS Status—Docket No. 78N-0308—January 14, 1983, 48 FR 1739.

One commercial organization stated that it has no objection to the withdrawal of this proposal to affirm that biotin is GRAS as a direct human food ingredient because the regulation at 21 CFR 182.8159 is quite adequate. The comment added, however, that if the agency decides at some point to reinstate a GRAS affirmation proposal for biotin, the agency should consider the comments that the firm submitted in response to the original proposal.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's

decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

26. Glycerin; Affirmation of GRAS Status as a Direct Human Food Ingredient—Docket No. 78N-0348, February 8, 1983, 48 FR 5758.

One commercial organization commented on this proposal to affirm glycerin as GRAS as a direct human food ingredient. The firm stated that it had responded to all FDA requests for information concerning the synthetic glycerin it produced in compliance with 21 CFR 182.1320 and other applicable regulations. These requests began in 1989 and the most recent submission was March 11, 1991. The firm stated that this information was provided at significant cost to the firm and that it was puzzled by the decision to withdraw this proposed rule when the review was quite active.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

27. Regenerated Collagen; Proposed GRAS Status as a Direct Human Food Additive—Docket No. 82N-0219—April 26, 1983, 48 FR 18833.

Two commercial organizations urged FDA to complete this rulemaking procedure to affirm that regenerated collagen is GRAS as a direct human food ingredient. These comments stated that a codified regulation for regenerated collagen would serve the needs of U.S. industry and protect the public from regenerated collagen produced in a manner different from the specifications in the GRAS affirmation proposal.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

28. Protein Hydrolysates and Enzymatically Hydrolyzed Animal (Milk Casein) Protein; Proposed GRAS Status—Docket No. 82N-0008—December 8, 1983, 48 FR 54990.

On behalf of its client, one consulting organization objected to FDA's announced intent to withdraw this proposal to affirm that certain protein hydrolysates and enzymatically hydrolyzed animal (milk casein) protein

are GRAS for use as direct human food ingredients. The comment stated that the rulemaking process should be completed as proposed because the withdrawal of the proposed rule will convey a message of uncertainty regarding the regulatory status of these ingredients.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

29. Hydrochloric Acid; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient—Docket No. 80N-0148—April 26, 1984, 49 FR 17966.

A law firm, on behalf of its client, commented that the 1984 proposal to affirm that hydrochloric acid is GRAS as a direct human food ingredient should be withdrawn because it is scientifically, administratively, and economically unsound. The comment stated that the proposal, which would not permit byproduct hydrochloric acid as a direct food ingredient, would cause significant economic disruption within the fluorocarbon industry. Although not objecting to the agency's action to withdraw this proposal, another law firm stated that its client understood that if the proposal is withdrawn, current regulations support its client's determination that byproduct hydrochloric acid is GRAS. A commercial organization recommended that the agency amend the proposal to include types of hydrochloric acid consistent with the Food Chemical Codex definition of food-grade acid or, alternatively, expand the list of acceptable processes to include byproduct hydrochloric acid from the fumed silica process and other suitable manufacturing processes.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

30. Margarine; Proposal to Amend the Standard of Identity—Docket No. 82P-0186—October 30, 1984, 49 FR 43560.

A trade association urged FDA to finalize the proposed rule as originally published, or to issue a tentative final rule and proceed to final rulemaking as expeditiously as possible. The proposal would amend the standard of identity for margarine to remove the list of permitted emulsifiers and the maximum use level restrictions for each from the

current standard and to retain the provision for the use of safe and suitable emulsifiers without specified limitations.

The agency expects to complete this rulemaking proceeding. Therefore, the agency is deferring its decision to withdraw this proposed rule until a later date.

III. Additional FDA-Initiated Actions

In addition, the agency, on its own initiative, has further reviewed the proposals listed in the notice of intent and is deferring its decision to withdraw the following nine proposals:

1. Glycerophosphates; Proposed Affirmation and Deletion of GRAS Status—Docket No. 78N-0335—May 15, 1979, 44 FR 28336.

This proposal was inadvertently included in the notice of intent. On March 14, 1991, FDA issued a tentative final rule in the **Federal Register** (56 FR 10843) tentatively affirming the GRAS Status of glycerophosphates. This tentative final rule was based on the proposed rule published on May 15, 1979 (44 FR 28336) and the received comments. The agency is in the process of completing this rulemaking proceeding.

2. Brown and Yellow Mustard and Their Derivatives; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient—Docket No. 77N-0033—August 26, 1977, 42 FR 43092.

3. Gelatin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient—Docket No. 77N-0232—November 11, 1977, 42 FR 58763.

4. Lard and Lard Oil; Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients—Docket No. 78N-0336—May 18, 1979, 44 FR 29102.

5. Sodium Dithionite and Zinc Dithionite; Proposed Affirmation of GRAS Status—79N-0095—January 25, 1980, 45 FR 6117.

6. Japan Wax; Proposed Deletion from GRAS Status as an Indirect Human Food Ingredient—Docket No. 80N-0196—July 9, 1982, 47 FR 29965.

7. Thiopropionic Acid and Disulfur Thiopropionate; Proposed Removal of GRAS Status—Docket No. 80N-0361—August 13, 1982, 47 FR 35240.

8. Zinc Salts; Proposed Affirmation of GRAS Status—Docket No. 82N-0187—October 26, 1982—47 FR 47441; and

9. Unmodified Food Starches and Acid Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients—Docket No. 84N-0341—April 1, 1985, 50 FR 12821.

After considering the comments received on other proposals to implement the agency's GRAS review

program, FDA has decided to defer its decisions on the withdrawal of all of the GRAS proposals included in the notice of intent. The agency is in the process of reexamining the issues involved in each of these proposed regulations that implement the agency's GRAS review program and expects to decide, in the

near future, to either issue a final rule based on the proposal and the received public comments, repropose the rulemaking proceeding, or withdraw the proposal. The agency's decision in each case will be the subject of a future Federal Register publication.

Therefore, for the reasons set forth above, and under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, the agency announces that it is withdrawing the following proposed rules, published in the Federal Register on the dates indicated:

Title	Docket No.	FR publication date and cite
Prescription Drugs; Proposed Changes in Labeling Requirements Prescription Drugs.....	85N-0358	Nov. 10, 1961, 26 FR 10601.
Prescription Drugs; Further Proposals to Amend Labeling Requirements.....	85N-0358	May 10, 1962, 27 FR 4482.
Methyl Salicylate; Oil of Wintergreen; Notice of Proposal to Establish Tolerances for Residues.....	91N-0301	Sept. 26, 1962, 27 FR 9521.
Antibiotics in Combination with Analgesic Substances, Antihistaminics, and Caffeine; Proposal to Delete from List of Oral Drugs Acceptable for Certification.....	91N-0302	Aug. 17, 1963, 28 FR 8471.
Food Additives in Animal Feed; Proposed Antibiotics for Growth Promotion and Feed Efficiency.....	91N-0304	Nov. 19, 1964, 29 FR 15538.
Tests, Methods of Assay and Certification of Certain Antibiotic Drugs.....	85N-0380	Oct. 6, 1965, 30 FR 12746.
Certain Drug-Labeling Exemptions; Proposed Termination.....	85N-0356	Nov. 23, 1966, 31 FR 14840.
Drugs; Current Good Manufacturing Practice in Manufacture, Processing, Packing or Holding; Repackaged Tablets or Capsules.....	85N-0359	Mar. 2, 1967, 32 FR 3470.
Time-Release Dosage Forms of Drugs; Statement Regarding New-Drug Status.....	91N-0307	Sept. 6, 1967, 32 FR 12756.
Promotional Labeling of Oral Contraceptives; Proposed Statement of Policy.....	85N-0383	Sept. 13, 1967, 32 FR 13008.
Drugs for Human Use; Drug Efficacy Study Implementation; Announcement and Proposal Regarding Methylergonovine Maleate Tablets and Methylergonovine Maleate Injection.....	91N-0309	June 5, 1968, 33 FR 8348.
Kanamycin Sulfate; Kanamycin B Content Testing Method.....	91N-0310	Apr. 26, 1969, 34 FR 6993.
Pyrimethamine, Sulfamonomethoxine; Proposal to Revoke Exemption from Certification.....	91N-0311	Mar. 25, 1971, 36 FR 5619.
Food Additives; Proposed Revocation of Use of Morpholine.....	85N-0363	Nov. 3, 1972, 37 FR 23456.
Labeling or Misbranding of Drugs; Misleading Proprietary or Trade Names.....	85N-0357	Mar. 27, 1974, 39 FR 11298.
2-Mercaptoimidazole; Use in Closures and Product Delivery Systems for Drugs and Cosmetics and in Components of Medical Devices.....	91N-0255	May 2, 1974, 39 FR 15306.
Intramammary Infusion Products for Treating Mastitis; Proposed Revocation and Amendment of Antibiotic Certification Provisions and Related Regulations.....	85N-0360	Aug. 30, 1974, 39 FR 31647.
Aflatoxin in Shelled Peanuts and Peanut Products Used as Human Food; Proposed Tolerance.....	78N-0048	Dec. 6, 1974, 39 FR 42748.
Conditions for Marketing Human Prescription Drugs; Proposed Rulemaking and Notice of Enforcement Policy for Drugs Subject to the Effectiveness Requirements of the Drug Amendments of 1962.....	75N-0052	June 20, 1975, 40 FR 26142.
Animal Food and Feed; Prohibited Substances.....	75N-0180	Sept. 9, 1975, 40 FR 41797.
Methadone; Proposal to Amend Procedures for Denying or Revoking Approval of Applications to Receive Shipments.....	75N-0151	Nov. 7, 1975, 40 FR 52049.
Drained Weights for Processed Fruits and Vegetables; Standards of Fill of Container and Label Statement.....	75P-0166	Nov. 7, 1975, 40 FR 52172.
Chloroform in Contact With Food; Proposal to Amend Food Additive Regulations.....	76N-0097	Apr. 9, 1976, 41 FR 15029.
Human Drugs; Current Good Manufacturing Practice in the Manufacture, Processing, Packing, or Holding of Large Volume Parenterals.....	76N-0099	June 1, 1976, 41 FR 22202.
Infant Foods; Percentage Declaration of Ingredients.....	76P-0329	Sept. 7, 1976, 41 FR 37595.
Infant and Junior Foods; Establishment of Common or Usual Name.....	76P-0330	Sept. 7, 1976, 41 FR 37593.
Saccharin and its Salts.....	76N-0510	Jan. 7, 1977, 42 FR 1486.
Administrative Practices and Procedures; Publicity Policy.....	76N-0478	Mar. 4, 1977, 42 FR 12436.
Saccharin and its Salts.....	77N-0085	Apr. 15, 1977, 42 FR 19996.
Ionizing Radiation Therapy Equipment; Notice of Intent to Propose Rules and Develop Guidelines.....	77N-0031	Mar. 22, 1977, 42 FR 15428.
Enriched Rice; Proposal to Revise Standard.....	77N-0116	July 15, 1977, 42 FR 36487.
Drugs for Human and Veterinary Use; Public Disclosure of Specifications.....	77N-0124	July 15, 1977, 42 FR 36485.
New Drugs for Investigational Use; Prompt Reporting of Animal Studies and Data.....	77N-0059	July 15, 1977, 42 FR 36490.
New Animal Drugs; Bovine Test Dips.....	76N-0286	Aug. 9, 1977, 42 FR 40217.
New Drugs for Investigational Use; Availability of Draft of Bioresearch Monitoring Data Collection Form.....	77N-0190	Aug. 16, 1977, 42 FR 41301.
Annatto Extract, Paprika Oleoresin, and Turmeric Oleoresin; Removal of Provisions for Trichloroethylene.....	75P-0132	Sept. 27, 1977, 42 FR 49464.
Trichloroethylene; Removal from Food Additive Use.....	76N-0469	Sept. 27, 1977, 42 FR 49465.
Trichloroethylene in Human Drug and Cosmetic Products; Declaration of New Drug Status and Determination of Status in Cosmetics.....	77N-0029	Sept. 27, 1977, 42 FR 49467.
Trichloroethylene; Prohibition in Animal and Pet Food.....	75P-0132	Sept. 27, 1977, 42 FR 49468.
Trichloroethylene in Animal Drug Products; Proposed Declaration of New Animal Drug Status.....	76N-0476	Sept. 27, 1977, 42 FR 49470.
Clinical Investigators; Proposed Establishment of Regulations on Obligations of Sponsors and Monitors.....	77N-0195	Sept. 27, 1977, 42 FR 49612.
Pasteurized Process Cheese and Cheese Products; Proposed Revision of Definitions and Standards of Identity.....	77P-0070	Oct. 4, 1977, 42 FR 53970.
Skim Milk Cheese for Manufacturing; Proposal to Amend Identity Standard.....	77P-0071	Oct. 4, 1977, 42 FR 53979.
Preservation of Cosmetics Coming in Contact With The Eye; Intent to Propose Regulations and Request for Information.....	77N-0105	Oct. 11, 1977, 42 FR 54837.
Drained Weight or Solid Content Weight for Canned Fruits and Vegetables; Label Statement, Standards of Fill of Container, and Temporary Labeling Exemption.....	77P-0097	Dec. 9, 1977, 42 FR 62262.
Public Information; Disclosure of Existence.....	77N-0248	Mar. 28, 1978, 43 FR 12869.
Food Labeling; Ingredient Labeling Exemptions.....	76P-0430	Apr. 7, 1978, 43 FR 14675.
X-Ray Intensifying Screens; Intent to Develop a Radiation Protection Recommendation.....	77P-0123	
Common or Usual Names for Vegetable Protein Products and Substitutes for Meat, Seafood, Poultry, Eggs, or Cheeses Which Contain Vegetable Protein Products as Sources of Protein; Tentative Final Rule.....	77P-0357	
Obligations of Clinical Investigators of Regulated Articles; Proposed Establishment of Regulations.....	78N-0074	June 2, 1978, 43 FR 24086.
Bioresearch Monitoring Program; Clarification of Part Designation.....	75N-0205	July 14, 1978, 43 FR 30472.
	77N-0278	Aug. 8, 1978, 43 FR 35210.
	78N-0282	Sept. 26, 1978, 43 FR 43468.

Title	Docket No.	FR publication date and cite
Orange B; Termination of Listing.....	78C-0216	Oct. 3, 1978, 43 FR 45611.
Estrogenic, Oral Contraceptive, and Progestational Drug Products; Proposed Requirements for Patient Labeling.....	78N-0274	Oct. 13, 1978, 43 FR 47198.
2-Nitropropane; Proposed Removal from Food Additive Use.....	78N-0112	Dec. 1, 1978, 43 FR 56247.
Estrogens to Treat Postpartum Breast Engorgement; Proposed Requirements for Patient Labeling.....	78N-0383	Dec. 5, 1978, 43 FR 56906.
Status of Injectable Animal Drugs; Intent Regarding Sterility and Pyrogenicity of Injectable Animal Drugs.....	78N-0267	Dec. 15, 1978, 43 FR 58591.
Recombinant DNA; Intent to Propose Regulations.....	78N-0012	Dec. 22, 1978, 43 FR 60134.
Estradiol Benzoate, Progesterone, Testosterone Propionate, and Estradiol Monopalmitate for Use in Food-Producing Animals.....	78N-0435	Jan. 5, 1979, 44 FR 1381.
Diagnostic Ultrasound Equipment; Intent to Propose Rules and Develop Regulations.....	78N-0288	Feb. 13, 1979, 44 FR 9542.
New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Postponement of Final Action.....	77N-0076	Mar. 6, 1979, 44 FR 12208.
Medical Devices; Classification of pH Catheter Probes.....	79N-1419	Mar. 9, 1979, 44 FR 13303.
Medical Devices; Classification of Catheter Guide Holders.....	78N-1425	Mar. 9, 1979, 44 FR 13309.
Medical Devices; Classification of Electrocardiograph Conducting Media.....	78N-1455	Mar. 9, 1979, 44 FR 13337.
Requirements for Estrogen Labeling Directed to Patients.....	78N-0303	Apr. 17, 1979, 44 FR 22752.
Protection of Human Subjects; Proposed Establishment of Regulations.....	78N-0031	Apr. 24, 1979, 44 FR 24106.
Hydrazine; Proposed Removal from Food Additive Use.....	78N-0208	June 12, 1979, 44 FR 33693.
Hydrazine in Human Drug Products; Declaration of New Drug Status.....	78N-0384	June 12, 1979, 44 FR 33694.
Medical Devices; Classification of Iron Kinetics Tests.....	78N-1870	Sept. 11, 1979, 44 FR 52992.
Medical Devices; Classification of Red Cell Survival Tests.....	78N-1875	Sept. 11, 1979, 44 FR 52997.
Medical Devices; Classification of Systems for the Identification to Hepatitis B Antigen.....	78N-1934	Sept. 11, 1979, 44 FR 53056.
Medical Devices; Classification of Nonindwelling Blood Nitrogen Partial Pressure (PN2) Analyzer.....	78N-1861	Nov. 2, 1979, 44 FR 63309.
Medical Devices; Classification of Gas Cylinders.....	78N-1801	Nov. 2, 1979, 44 FR 63421.
Medical Devices; Classification of Gas Cylinder Holders.....	78N-1802	Nov. 2, 1979, 44 FR 63422.
Procedures to Minimize Medical X-Ray Exposure of the Human Embryo and Fetus; Recommendations for Medical Radiation Exposure of Women of Childbearing Potential.....	75N-0340	Nov. 20, 1979, 44 FR 66616.
Biological Products; Labeling Standards; Position and Prominence of Proper Name.....	79N-0263	Jan. 25, 1980, 45 FR 6120.
Medical Devices; Voluntary Standards Development; Requests for Data and Information on In Vitro Diagnostics.....	80N-0100	Feb. 1, 1980, 45 FR 7493.
Devices Used as a Radiation Source (In Combination With a Psoralen Drug) in the Photochemotherapy for Psoriasis; Intent to Propose Rules and Develop Recommendations.....	79N-0013	Feb. 8, 1980, 45 FR 8870.
Additional Standards for Human Blood and Blood Products; Antihemophilic Factor (Human).....	79N-0326	Apr. 4, 1980, 45 FR 22975.
Diluents for Cosmetic Color Additive Mixtures; Intent to Propose Rules; Request for Information.....	78N-0390	Apr. 22, 1980, 45 FR 26977.
Substances Prohibited from Use in Animal Food or Feed; Tentative Final Rule.....	75N-0180	Apr. 29, 1980, 45 FR 28349.
Allergenic Products; Proposed Testing and Labeling Requirements.....	79N-0410	May 2, 1980, 45 FR 29305.
Quality Control Testing of Platelet Concentrate (Human) and Cryoprecipitated Antihemophilic Factor (Human).....	80N-0035	July 8, 1980, 45 FR 45924.
Blood and Blood Components; Error and Accident Reports.....	79N-0094	Aug. 8, 1980, 45 FR 52821.
Food Labeling; Net Weight Labeling Requirements.....	79N-0292	Aug. 8, 1980, 45 FR 53023.
Shipping Temperature Requirements for Certain Biological Products.....	80N-0497	Dec. 30, 1980, 45 FR 85785.
Apple Juice and Concentrated Apple Juice; Possible Establishment of Standards.....	82N-0218	Aug. 13, 1982, 47 FR 35234.
Medical Devices; Notice of Intent to Initiate Proceedings to Require Premarket Approval of Preamendments Devices.....	83N-0240	Sept. 6, 1983, 48 FR 40272.
Clarification of Potency Standard for Certain Antibiotic Drugs.....	83N-0301	Dec. 2, 1983, 48 FR 54364.
Cheese and Related Cheese Products; Repeal of Four Class Standards of Identity.....	80N-0372	Apr. 23, 1984, 49 FR 17017.

Dated: December 19, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30780 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-01-M

Register

Monday
December 30, 1991

Part XI

The President

Executive Order 12785—Extending the
President's Education Policy Advisory
Committee

Executive Order 12786—Adjustments of
Certain Rates of Pay and Allowances

Notice of December 26—Continuation of
Libyan Emergency

Monday
December 30, 1991

Part XI

The President

Executive Order 12785—Extending the
President's Education Policy Advisory
Committee
Executive Order 12786—Adjustments of
Certain Rates of Pay and Allowances
Notice of December 25—Continuation of
Libyan Emergency

Federal Register

Vol. 56, No. 250

Monday, December 30, 1991

Presidential Documents

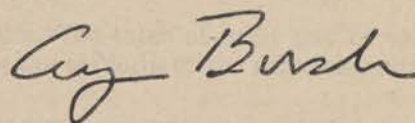
Title 3—

Executive Order 12785 of December 26, 1991

The President

Extending the President's Education Policy Advisory Committee

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to extend the President's Education Policy Advisory Committee, it is hereby ordered that section 4(b) of Executive Order No. 12687, as amended, is further amended by deleting the date "December 31, 1991" and inserting in lieu thereof the date "December 31, 1992".



THE WHITE HOUSE,
December 26, 1991.

[FR Doc. 91-31265

Filed 12-26-91; 5:01 pm]

Billing code 3195-01-M

Presidential Documents

Public Papers

Vol. 10, No. 10

Monday, December 22, 1953

This Day

The President

Extending the President's Education Policy Address

White

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Defense Education Act, I hereby extend the President's Education Policy Address, which was made on October 15, 1953, to the date of the President's address to the Congress on January 6, 1954, and to the date of the President's address to the Congress on January 6, 1955.

John F. Kennedy

THE WHITE HOUSE

December 22, 1953

Public Papers

Vol. 10, No. 10

Monday, December 22, 1953

Presidential Documents

Executive Order 12786 of December 26, 1991

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 704 of Public Law 101-194; section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509; section 633 of Public Law 101-509; section 301(a) of Public Law 102-40; section 305 of Public Law 102-140; section 601 of Public Law 102-190; section 31 of title 2, United States Code; section 104 of title 3, United States Code; sections 5303, 5318, and 5382 of title 5, United States Code; and section 461(a) of title 28, United States Code, it is hereby ordered as follows:

Section 1. Statutory pay systems. The rates of basic pay or salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5303, 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (5 U.S.C. 5303; 22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (5 U.S.C. 5303; 38 U.S.C. 7404; section 301(a) of Public Law 102-40) at Schedule 3.

Sec. 2. Senior Executive Service. Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. Executive salaries. The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312-5316, 5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. Uniformed services. Pursuant to section 601 of Public Law 102-190, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. Interim geographic adjustments. (a) Pursuant to section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509, employees under the statutory pay systems covered under section 1 of this order, and members of the United States Park Police, who are assigned to a duty station located in one of the geographical areas listed in Schedule 9 shall be entitled, except as may be provided under subsection (b) of this section, to receive an interim geographic adjustment at the rate shown on Schedule 9, which schedule is attached hereto and made a part hereof.

(b)(1) The Office of Personnel Management shall prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, geographic adjustment shall be payable in the case of employees receiving special pay rates.

(2) The Secretary of State shall prescribe regulations governing the application of interim geographic adjustments to employees under the Foreign Service Schedule, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

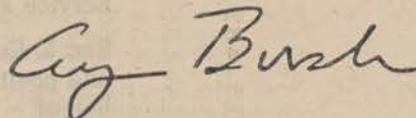
(3) The Secretary of Veterans Affairs shall prescribe regulations governing the application of interim geographic adjustments to employees under the schedules for the Veterans Health Administration of the Department of Veterans Affairs, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(4) The Secretary of the Interior shall prescribe regulations governing the application of interim geographic adjustments to members of the United States Park Police, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(c) The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 302(c)(1)(D) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509, to extend the application of interim geographic adjustments shown on Schedule 9, upon the request of an agency head, to employees who would not otherwise be covered.

Sec. 6. Effective dates. The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8 are effective on January 1, 1992. The other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1992.

Sec. 7. Executive Order No. 12736 of December 12, 1990, is superseded.



THE WHITE HOUSE,
December 26, 1991.

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

	1	2	3	4	5	6	7	8	9	10
GS-1	\$11,478	\$11,861	\$12,242	\$12,623	\$13,006	\$13,230	\$13,606	\$13,986	\$14,003	\$14,356
2	12,905	13,212	13,640	14,003	14,157	14,573	14,989	15,405	15,821	16,237
3	14,082	14,551	15,020	15,489	15,958	16,427	16,896	17,365	17,834	18,303
4	15,808	16,335	16,862	17,389	17,916	18,443	18,970	19,497	20,024	20,551
5	17,686	18,276	18,866	19,456	20,046	20,636	21,226	21,816	22,406	22,996
6	19,713	20,370	21,027	21,684	22,341	22,998	23,655	24,312	24,969	25,626
7	21,906	22,636	23,366	24,096	24,826	25,556	26,286	27,016	27,746	28,476
8	24,262	25,071	25,880	26,689	27,498	28,307	29,116	29,925	30,734	31,543
9	26,798	27,691	28,584	29,477	30,370	31,263	32,156	33,049	33,942	34,835
10	29,511	30,495	31,479	32,463	33,447	34,431	35,415	36,399	37,383	38,367
11	32,423	33,504	34,585	35,666	36,747	37,828	38,909	39,990	41,071	42,152
12	38,861	40,156	41,451	42,746	44,041	45,336	46,631	47,926	49,221	50,516
13	46,210	47,750	49,290	50,830	52,370	53,910	55,450	56,990	58,530	60,070
14	54,607	56,427	58,247	60,067	61,887	63,707	65,527	67,347	69,167	70,987
15	64,233	66,374	68,515	70,656	72,797	74,938	77,079	79,220	81,361	83,502

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning
on or after January 1, 1992)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	\$64,233	\$52,048	\$42,174	\$34,174	\$27,691	\$24,755	\$22,130	\$19,784	\$17,686
2	66,160	53,609	43,439	35,199	28,522	25,498	22,794	20,378	18,217
3	68,145	55,218	44,742	36,255	29,377	26,263	23,478	20,989	18,763
4	70,189	56,874	46,085	37,343	30,259	27,050	24,182	21,619	19,326
5	72,295	58,580	47,467	38,463	31,166	27,862	24,908	22,267	19,906
6	74,464	60,338	48,891	39,617	32,101	28,698	25,655	22,935	20,503
7	76,698	62,148	50,358	40,806	33,065	29,559	26,424	23,623	21,118
8	78,998	64,012	51,869	42,030	34,056	30,446	27,217	24,332	21,752
9	81,368	65,933	53,425	43,291	35,078	31,359	28,034	25,062	22,404
10	83,502	67,911	55,028	44,589	36,130	32,300	28,875	25,814	23,076
11	83,502	69,948	56,678	45,927	37,214	33,269	29,741	26,588	23,769
12	83,502	72,047	58,379	47,305	38,331	34,267	30,633	27,386	24,482
13	83,502	74,208	60,130	48,724	39,481	35,295	31,552	28,207	25,216
14	83,502	76,434	61,934	50,186	40,665	36,354	32,499	29,053	25,972

**SCHEDULE 3--VETERANS HEALTH
ADMINISTRATION SCHEDULES, DEPARTMENT OF VETERANS AFFAIRS**

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1992)

Office of the Chief Medical Director

Deputy Chief Medical Director	\$109,086
Associate Deputy Chief Medical Director	104,483
Assistant Chief Medical Directors	101,404

	<u>Minimum</u>	<u>Maximum</u>
Medical Directors	\$86,519	\$98,056
Director of Nursing Service	86,519	98,056
Director of Pharmacy Service	75,335	93,558
Director of Dietetic Service	75,335	93,558
Director of Podiatric Service	75,335	93,558
Director of Optometric Service	75,335	93,558
Director of Chaplain Service	75,335	93,558

Physician and Dentist Schedule

Director Grade	\$75,335	\$93,558
Executive Grade	69,562	88,655
Chief Grade	64,233	83,502
Senior Grade	54,607	70,987
Intermediate Grade	46,210	60,070
Full Grade	38,861	50,516
Associate Grade	32,423	42,152

Nurse Schedule

Director Grade	\$54,607	\$83,502
Senior Grade	38,861	60,070
Intermediate Grade	26,798	42,152
Entry Grade	19,713	29,982

Clinical Podiatrist and Optometrist Schedule

Chief Grade	\$64,233	\$83,502
Senior Grade	54,607	70,987
Intermediate Grade	46,210	60,070
Full Grade	38,861	50,516
Associate Grade	32,423	42,152

Physician Assistant and Expanded-Function
Dental Auxiliary Schedule*

Director Grade	\$64,233	\$83,502
Assistant Director Grade	54,607	70,987
Chief Grade	46,210	60,070
Senior Grade	38,861	50,516
Intermediate Grade	32,423	42,152
Full Grade	26,798	34,835
Associate Grade	23,061	29,982
Junior Grade	19,713	25,626

*Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments as authorized by sec. 301(a) of Public Law 102-40.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1992)

ES-1	\$90,000
ES-2	94,400
ES-3	98,600
ES-4	104,000
ES-5	108,300
ES-6	112,100

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1992)

level I	\$143,800
level II	129,500
level III	119,300
level IV	112,100
level V	104,800

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1992)

Vice President	\$166,200
Senators	129,500
Members of the House of Representatives	129,500
Delegates to the House of Representatives	129,500
Resident Commissioner from Puerto Rico	129,500
President pro tempore of the Senate	143,800
Majority leader and minority leader of the Senate	143,800
Majority leader and minority leader of the House of Representatives	143,800
Speaker of the House of Representatives	166,200

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1992)

Chief Justice of the United States	\$166,200
Associate Justices of the Supreme Court	159,000
Circuit Judges	137,300
District Judges	129,500
Judges of the Court of International Trade	129,500

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

(Effective on January 1, 1992)

PART I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	COMMISSIONED OFFICERS										Over 22	Over 26
		Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18		
O-10**	\$6417.60	\$6643.50	\$6643.50	\$6643.50	\$6643.50	\$6898.20	\$6898.20	\$7280.40	\$7280.40	\$7801.20	\$8323.50	\$8323.50	\$8842.20*
O-9	5687.70	5836.50	5961.00	5961.00	5961.00	6112.50	6112.50	6366.90	6366.90	6898.20	7280.40	7280.40	7801.20
O-8	5151.60	5306.10	5431.80	5431.80	5431.80	5836.50	5836.50	6112.50	6112.50	6366.90	6898.20	7068.30	7668.30
O-7	4280.40	4571.40	4571.40	4571.40	4776.60	4776.60	5053.50	5053.50	5306.10	5836.50	6238.20	6238.20	6238.20
O-6	3172.80	3485.70	3714.30	3714.30	3714.30	3714.30	3714.30	3714.30	3840.30	4447.50	4674.60	5053.50	5480.70
O-5	2537.40	2979.30	3185.40	3185.40	3185.40	3185.40	3281.70	3458.40	3690.30	3966.60	4193.70	4320.90	4471.80
O-4	2138.70	2604.60	2778.30	2778.30	2829.90	2954.70	3156.30	3333.60	3485.70	3638.70	3739.20	3739.20	3739.20
O-3***	1987.50	2222.40	2375.70	2628.60	2754.30	2853.00	3007.50	3156.30	3233.70	3233.70	3233.70	3233.70	3233.70
O-2***	1733.10	1892.70	2274.30	2350.50	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40
O-1***	1504.80	1566.30	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70

COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY SERVICE
AS AN ENLISTED MEMBER OR WARRANT OFFICER

O-3	-	-	-	\$2628.60	\$2754.30	\$2853.00	\$3007.50	\$3156.30	\$3281.70	\$3281.70	\$3281.70	\$3281.70	\$3281.70
O-2	-	-	-	2350.50	2399.40	2475.60	2604.60	2704.20	2778.30	2778.30	2778.30	2778.30	2778.30
O-1	-	-	-	1892.70	2022.30	2096.70	2172.60	2248.20	2350.50	2350.50	2350.50	2350.50	2350.50

* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is \$8,733.30 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is \$9,756.60*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active duty service as an enlisted member or warrant officer.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
WARRANT OFFICERS														
W-5	\$2025.00	\$2172.60	\$2172.60	\$2222.40	\$2323.20	\$2425.80	\$2527.50	\$2704.20	\$2829.90	\$2929.90	\$3007.50	\$3455.90	\$3587.10	\$3846.30
W-4	1840.50	1996.50	1996.50	2022.30	2045.70	2195.40	2323.20	2399.40	2475.60	2549.40	2628.60	3104.70	3208.50	3458.40
W-3	1611.90	1743.90	1743.90	1794.90	1892.70	1996.50	2072.10	2148.30	2222.40	2300.40	2375.70	2450.70	2549.40	2929.20
W-2	1342.80	1539.90	1539.90	1668.30	1743.90	1818.90	1892.70	1971.00	2045.70	2121.90	2195.40	2274.30	2274.30	2274.30
ENLISTED MEMBERS														
E-9*	-	-	-	-	-	-	\$2355.90	\$2408.70	\$2463.30	\$2519.70	\$2576.10	\$2626.20	\$2763.90	\$3032.70
E-8	-	-	-	-	-	\$1975.50	2031.90	2085.60	2139.60	2196.30	2246.70	2301.90	2436.90	2708.40
E-7	1186.80	1293.30	1347.30	1404.60	1457.10	1509.60	1565.10	1645.80	1697.40	1752.30	1779.00	1779.00	2167.20	2436.90
E-6	1041.30	1133.40	1188.60	1240.20	1321.80	1375.50	1430.10	1482.60	1509.60	1509.60	1509.60	1509.60	1509.60	1509.60
E-5	971.10	1025.70	1086.00	1170.00	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20
E-4	915.00	965.40	1003.80	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40
E-3	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50
E-2	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70
E-1**	726.60	-	-	-	-	-	-	-	-	-	-	-	-	-
E-1***	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is \$3,686.40, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	

COMMISSIONED OFFICERS

O-10	\$689.40	\$50.70	\$848.10
O-9	689.40	50.70	848.10
O-8	689.40	50.70	848.10
O-7	689.40	50.70	848.10
O-6	632.40	39.60	764.10
O-5	609.00	33.00	736.20
O-4	564.30	26.70	649.20
O-3	452.40	22.20	537.30
O-2	358.80	17.70	458.70
O-1	302.10	13.20	409.80

COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER

O-3	\$488.40	\$22.20	\$577.20
O-2	415.20	17.70	520.80
O-1	357.00	13.20	481.20

WARRANT OFFICERS

W-5	\$573.00	\$25.20	\$626.40
W-4	509.10	25.20	574.20
W-3	427.80	20.70	526.50
W-2	379.80	15.90	484.20
W-1	318.30	13.80	418.80

ENLISTED MEMBERS

E-9	\$418.20	\$18.60	\$551.10
E-8	384.30	15.30	507.90
E-7	327.90	12.00	471.90
E-6	296.70	9.90	436.20
E-5	273.60	8.70	392.10
E-4	238.20	8.10	341.10
E-3	233.70	7.80	317.40
E-2	190.20	7.20	302.10
E-1	168.90	6.90	302.10

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(c)(2) and Part IV of Executive Order 11157, as amended.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)**PART III--BASIC ALLOWANCE FOR SUBSISTENCE RATES**

Officers (per month) \$134.42

Enlisted Members (per day):

	<u>E-1 (less than 4 months' active duty)</u>	<u>All Other Enlisted</u>
When on leave or authorized to mess separately	\$5.92	\$6.41
When rations in-kind are not available	6.68	7.23
When assigned to duty under emergency conditions where no messing facilities of the United States are available	8.86	9.59

PART IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is \$543.90.

**SCHEDULE 9---INTERIM GEOGRAPHIC ADJUSTMENTS
FOR CERTAIN EMPLOYEES IN SPECIFIED AREAS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

<u>AREA</u>	<u>ADJUSTMENT RATE</u>
New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area	8%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area	8%
Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area	8%

[FR Doc. 91-31286

Filed 12-28-91; 5:02 pm]

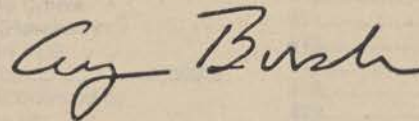
Billing code 3195-01-C

Presidential Documents

Notice of December 26, 1991

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986. Because the Government of Libya has continued its actions and policies in support of international terrorism as evidenced by its involvement in the destruction of Pan Am Flight 103, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1992. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
December 26, 1991.

[FR Doc. 91-31267

Filed 12-26-91; 5:03 pm]

Billing code 3195-01-M

Presidential Documents

Notice of December 20, 1960

Continuation of Libyan Emergency

On January 2, 1960, by Executive Order No. 13545, President Kennedy declared a national emergency in dealing with the present and extraordinary threat to the national security and foreign policy of the United States resulting from the actions and policies of the Government of Libya. On January 2, 1960, by Executive Order No. 13546, the President took additional measures to block Libyan agents in the United States. The President has transmitted a notice continuing this emergency to the Congress and the Federal Register every year since 1960. Because the Government of Libya has continued its actions and policies in support of international terrorism as evidenced by its involvement in the destruction of Pan Am Flight 101, the national emergency declared on January 7, 1960, and the measures enacted on January 7 and January 8, 1960, to deal with that emergency must continue in effect beyond January 7, 1961. Therefore, in accordance with section 2252(a) of the National Intelligence Act (50 U.S.C. 4252(a)), I am continuing the national emergency with respect to Libya. This notice shall be published in the Federal Register and transmitted to the Congress.

John F. Kennedy

THE WHITE HOUSE

December 20, 1960

100-100000-100000
100-100000-100000
100-100000-100000

Reader Aids

Federal Register

Vol. 56, No. 250

Monday, December 30, 1991

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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session will be published in Part II of the **Federal Register** on January 2, 1991.

The List of Public Laws may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws" from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

Last List December 26, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved).....	(869-013-00001-3).....	\$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101).....	(869-013-00002-1).....	14.00	¹ Jan. 1, 1991
4.....	(869-013-00003-0).....	15.00	Jan. 1, 1991
5 Parts:			
1-699.....	(869-013-00004-8).....	17.00	Jan. 1, 1991
700-1199.....	(869-013-00005-6).....	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved).....	(869-013-00006-4).....	18.00	Jan. 1, 1991
7 Parts:			
0-26.....	(869-013-00007-2).....	15.00	Jan. 1, 1991
27-45.....	(869-013-00008-1).....	12.00	Jan. 1, 1991
46-51.....	(869-013-00009-9).....	17.00	Jan. 1, 1991
52.....	(869-013-00010-2).....	24.00	Jan. 1, 1991
53-209.....	(869-013-00011-1).....	18.00	Jan. 1, 1991
210-299.....	(869-013-00012-9).....	24.00	Jan. 1, 1991
300-399.....	(869-013-00013-7).....	12.00	Jan. 1, 1991
400-699.....	(869-013-00014-5).....	20.00	Jan. 1, 1991
700-899.....	(869-013-00015-3).....	19.00	Jan. 1, 1991
900-999.....	(869-013-00016-1).....	28.00	Jan. 1, 1991
1000-1059.....	(869-013-00017-0).....	17.00	Jan. 1, 1991
1060-1119.....	(869-013-00018-8).....	12.00	Jan. 1, 1991
1120-1199.....	(869-013-00019-6).....	10.00	Jan. 1, 1991
1200-1499.....	(869-013-00020-0).....	18.00	Jan. 1, 1991
1500-1899.....	(869-013-00021-8).....	12.00	Jan. 1, 1991
1900-1939.....	(869-013-00022-6).....	11.00	Jan. 1, 1991
1940-1949.....	(869-013-00023-4).....	22.00	Jan. 1, 1991
1950-1999.....	(869-013-00024-2).....	25.00	Jan. 1, 1991
2000-End.....	(869-013-00025-1).....	10.00	Jan. 1, 1991
8.....	(869-013-00026-9).....	14.00	Jan. 1, 1991
9 Parts:			
1-199.....	(869-013-00027-7).....	21.00	Jan. 1, 1991
200-End.....	(869-013-00028-5).....	18.00	Jan. 1, 1991
10 Parts:			
0-50.....	(869-013-00029-3).....	21.00	Jan. 1, 1991
51-199.....	(869-013-00030-7).....	17.00	Jan. 1, 1991
200-399.....	(869-013-00031-5).....	13.00	⁴ Jan. 1, 1987
400-499.....	(869-013-00032-3).....	20.00	Jan. 1, 1991
500-End.....	(869-013-00033-1).....	27.00	Jan. 1, 1991
11.....	(869-013-00034-0).....	12.00	Jan. 1, 1991
12 Parts:			
1-199.....	(869-013-00035-8).....	13.00	Jan. 1, 1991
200-219.....	(869-013-00036-6).....	12.00	Jan. 1, 1991
220-299.....	(869-013-00037-4).....	21.00	Jan. 1, 1991
300-499.....	(869-013-00038-2).....	17.00	Jan. 1, 1991
500-599.....	(869-013-00039-1).....	17.00	Jan. 1, 1991
600-End.....	(869-013-00040-4).....	19.00	Jan. 1, 1991
13.....	(869-013-00041-2).....	24.00	Jan. 1, 1991

Title	Stock Number	Price	Revision Date
14 Parts:			
1-59.....	(869-013-00042-1).....	25.00	Jan. 1, 1991
60-139.....	(869-013-00043-9).....	21.00	Jan. 1, 1991
140-199.....	(869-013-00044-7).....	10.00	Jan. 1, 1991
200-1199.....	(869-013-00045-5).....	20.00	Jan. 1, 1991
1200-End.....	(869-013-00046-3).....	13.00	Jan. 1, 1991
15 Parts:			
0-299.....	(869-013-00047-1).....	12.00	Jan. 1, 1991
300-799.....	(869-013-00048-0).....	22.00	Jan. 1, 1991
800-End.....	(869-013-00049-8).....	15.00	Jan. 1, 1991
16 Parts:			
0-149.....	(869-013-00050-1).....	5.50	Jan. 1, 1991
150-999.....	(869-013-00051-0).....	14.00	Jan. 1, 1991
1000-End.....	(869-013-00052-8).....	19.00	Jan. 1, 1991
17 Parts:			
1-199.....	(869-013-00054-4).....	15.00	Apr. 1, 1991
200-239.....	(869-013-00055-2).....	16.00	Apr. 1, 1991
240-End.....	(869-013-00056-1).....	23.00	Apr. 1, 1991
18 Parts:			
1-149.....	(869-013-00057-9).....	15.00	Apr. 1, 1991
150-279.....	(869-013-00058-7).....	15.00	Apr. 1, 1991
280-399.....	(869-013-00059-5).....	13.00	Apr. 1, 1991
400-End.....	(869-013-00060-9).....	9.00	Apr. 1, 1991
19 Parts:			
1-199.....	(869-013-00061-7).....	28.00	Apr. 1, 1991
200-End.....	(869-013-00062-5).....	9.50	Apr. 1, 1991
20 Parts:			
1-399.....	(869-013-00063-3).....	16.00	Apr. 1, 1991
400-499.....	(869-013-00064-1).....	25.00	Apr. 1, 1991
500-End.....	(869-013-00065-0).....	21.00	Apr. 1, 1991
21 Parts:			
1-99.....	(869-013-00066-8).....	12.00	Apr. 1, 1991
100-169.....	(869-013-00067-6).....	13.00	Apr. 1, 1991
170-199.....	(869-013-00068-4).....	17.00	Apr. 1, 1991
200-299.....	(869-013-00069-2).....	5.50	Apr. 1, 1991
300-499.....	(869-013-00070-0).....	28.00	Apr. 1, 1991
500-599.....	(869-013-00071-4).....	20.00	Apr. 1, 1991
600-799.....	(869-013-00072-2).....	7.00	Apr. 1, 1991
800-1299.....	(869-013-00073-1).....	18.00	Apr. 1, 1991
1300-End.....	(869-013-00074-9).....	7.50	Apr. 1, 1991
22 Parts:			
1-299.....	(869-013-00075-7).....	25.00	Apr. 1, 1991
300-End.....	(869-013-00076-5).....	18.00	Apr. 1, 1991
23.....	(869-013-00077-3).....	17.00	Apr. 1, 1991
24 Parts:			
0-199.....	(869-013-00078-1).....	25.00	Apr. 1, 1991
200-499.....	(869-013-00079-0).....	27.00	Apr. 1, 1991
500-699.....	(869-013-00080-3).....	13.00	Apr. 1, 1991
700-1699.....	(869-013-00081-1).....	26.00	Apr. 1, 1991
1700-End.....	(869-013-00082-0).....	13.00	⁵ Apr. 1, 1990
25.....	(869-013-00083-8).....	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.01-1.160.....	(869-013-00084-6).....	17.00	Apr. 1, 1991
§§ 1.61-1.169.....	(869-013-00085-4).....	28.00	Apr. 1, 1991
§§ 1.170-1.300.....	(869-013-00086-2).....	18.00	Apr. 1, 1991
§§ 1.301-1.400.....	(869-013-00087-1).....	17.00	Apr. 1, 1991
§§ 1.401-1.500.....	(869-013-00088-9).....	30.00	Apr. 1, 1991
§§ 1.501-1.640.....	(869-013-00089-7).....	16.00	Apr. 1, 1991
§§ 1.641-1.850.....	(869-013-00090-1).....	19.00	⁵ Apr. 1, 1990
§§ 1.851-1.907.....	(869-013-00091-9).....	20.00	Apr. 1, 1991
§§ 1.908-1.1000.....	(869-013-00092-7).....	22.00	Apr. 1, 1991
§§ 1.1001-1.1400.....	(869-013-00093-5).....	18.00	⁵ Apr. 1, 1990
§§ 1.1401-End.....	(869-013-00094-3).....	24.00	Apr. 1, 1991
2-29.....	(869-013-00095-1).....	21.00	Apr. 1, 1991
30-39.....	(869-013-00096-0).....	14.00	Apr. 1, 1991
40-49.....	(869-013-00097-8).....	11.00	Apr. 1, 1991
50-299.....	(869-013-00098-6).....	15.00	Apr. 1, 1991
300-499.....	(869-013-00099-4).....	17.00	Apr. 1, 1991
500-599.....	(869-013-00100-1).....	6.00	⁵ Apr. 1, 1990

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
600-End	(869-013-00101-0)	6.50	Apr. 1, 1991	41 Chapters:			
27 Parts:				1, 1-1 to 1-10		13.00	^a July 1, 1984
1-199	(869-013-00102-8)	29.00	Apr. 1, 1991	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	^a July 1, 1984
200-End	(869-013-00103-6)	11.00	Apr. 1, 1991	3-6		14.00	^a July 1, 1984
28	(869-013-00104-4)	28.00	July 1, 1991	7		6.00	^a July 1, 1984
29 Parts:				8		4.50	^a July 1, 1984
0-99	(869-013-00105-2)	18.00	July 1, 1991	9		13.00	^a July 1, 1984
100-499	(869-013-00106-1)	7.50	July 1, 1991	10-17		9.50	^a July 1, 1984
500-899	(869-013-00107-9)	27.00	July 1, 1991	18, Vol. I, Parts 1-5		13.00	^a July 1, 1984
900-1899	(869-013-00108-7)	12.00	July 1, 1991	18, Vol. II, Parts 6-19		13.00	^a July 1, 1984
1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991	18, Vol. III, Parts 20-52		13.00	^a July 1, 1984
1910 (§§ 1910.1000 to end)	(869-013-00110-9)	14.00	July 1, 1991	19-100		13.00	^a July 1, 1984
1911-1925	(869-013-00111-7)	9.00	^a July 1, 1989	1-100	(869-013-00153-2)	8.50	^a July 1, 1990
1926	(869-013-00112-5)	12.00	July 1, 1991	101	(869-013-00154-1)	22.00	July 1, 1991
1927-End	(869-013-00113-3)	25.00	July 1, 1991	102-200	(869-013-00155-9)	11.00	July 1, 1991
30 Parts:				201-End	(869-013-00156-7)	10.00	July 1, 1991
1-199	(869-013-00114-1)	22.00	July 1, 1991	42 Parts:			
200-699	(869-013-00115-0)	15.00	July 1, 1991	1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
700-End	(869-013-00116-8)	21.00	July 1, 1991	61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
31 Parts:				400-429	(869-011-00159-9)	21.00	Oct. 1, 1990
0-199	(869-013-00117-6)	15.00	July 1, 1991	430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
200-End	(869-013-00118-4)	20.00	July 1, 1991	43 Parts:			
32 Parts:				1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1-39, Vol. I		15.00	^a July 1, 1984	1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
1-39, Vol. II		19.00	^a July 1, 1984	4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
1-39, Vol. III		18.00	^a July 1, 1984	44	(869-011-00164-5)	23.00	Oct. 1, 1990
1-189	(869-013-00119-2)	25.00	July 1, 1991	45 Parts:			
190-399	(869-013-00120-6)	29.00	July 1, 1991	1-199	(869-013-00165-6)	18.00	Oct. 1, 1991
400-629	(869-013-00121-4)	26.00	July 1, 1991	200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
630-699	(869-013-00122-2)	14.00	July 1, 1991	500-1199	(869-011-00167-0)	26.00	Oct. 1, 1990
700-799	(869-013-00123-1)	17.00	July 1, 1991	1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
800-End	(869-013-00124-9)	18.00	July 1, 1991	46 Parts:			
33 Parts:				1-40	(869-011-00169-6)	14.00	Oct. 1, 1990
1-124	(869-013-00125-7)	15.00	July 1, 1991	41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
125-199	(869-013-00126-5)	18.00	July 1, 1991	70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
200-End	(869-013-00127-3)	20.00	July 1, 1991	90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
34 Parts:				140-155	(869-013-00173-7)	13.00	Oct. 1, 1991
1-299	(869-013-00128-1)	24.00	July 1, 1991	*156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
300-399	(869-013-00129-0)	14.00	July 1, 1991	166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
400-End	(869-013-00130-3)	26.00	July 1, 1991	200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
35	(869-013-00131-1)	10.00	July 1, 1991	500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
36 Parts:				47 Parts:			
1-199	(869-013-00132-0)	13.00	July 1, 1991	0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
200-End	(869-013-00133-8)	26.00	July 1, 1991	20-39	(869-011-00179-3)	18.00	Oct. 1, 1990
37	(869-013-00134-6)	15.00	July 1, 1991	40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
38 Parts:				70-79	(869-011-00181-5)	18.00	Oct. 1, 1990
0-17	(869-013-00135-4)	24.00	July 1, 1991	80-End	(869-011-00182-3)	20.00	Oct. 1, 1990
18-End	(869-013-00136-2)	22.00	July 1, 1991	48 Chapters:			
39	(869-013-00137-1)	14.00	July 1, 1991	1 (Parts 1-51)	(869-011-00183-1)	30.00	Oct. 1, 1990
40 Parts:				1 (Parts 52-99)	(869-011-00184-0)	19.00	Oct. 1, 1990
1-51	(869-013-00138-9)	27.00	July 1, 1991	2 (Parts 201-251)	(869-011-00185-8)	19.00	Oct. 1, 1990
52	(869-013-00139-7)	28.00	July 1, 1991	2 (Parts 252-299)	(869-011-00186-6)	15.00	Oct. 1, 1990
53-60	(869-013-00140-1)	31.00	July 1, 1991	3-6	(869-011-00187-4)	19.00	Oct. 1, 1990
61-80	(869-013-00141-9)	14.00	July 1, 1991	7-14	(869-011-00188-2)	26.00	Oct. 1, 1990
81-85	(869-013-00142-7)	11.00	July 1, 1991	*15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
86-99	(869-013-00143-5)	29.00	July 1, 1991	49 Parts:			
100-149	(869-013-00144-3)	30.00	July 1, 1991	1-99	(869-011-00190-4)	14.00	Oct. 1, 1990
150-189	(869-013-00145-1)	20.00	July 1, 1991	100-177	(869-011-00191-2)	27.00	Oct. 1, 1990
190-259	(869-013-00146-0)	13.00	July 1, 1991	178-199	(869-011-00192-1)	22.00	Oct. 1, 1990
260-299	(869-013-00147-8)	31.00	July 1, 1991	200-399	(869-011-00193-9)	21.00	Oct. 1, 1990
300-399	(869-013-00148-6)	13.00	July 1, 1991	400-999	(869-011-00194-7)	26.00	Oct. 1, 1990
400-424	(869-013-00149-4)	23.00	July 1, 1991	1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
425-699	(869-013-00150-8)	23.00	^a July 1, 1989	*1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
700-789	(869-013-00151-6)	20.00	July 1, 1991	50 Parts:			
790-End	(869-013-00152-4)	22.00	July 1, 1991	1-199	(869-011-00197-1)	20.00	Oct. 1, 1990
				200-599	(869-011-00198-0)	16.00	Oct. 1, 1990
				600-End	(869-011-00199-8)	15.00	Oct. 1, 1990
				CFR Index and Findings Aids			
					(869-013-00053-6)	30.00	Jan. 1, 1991

Title	Stock Number	Price	Revision Date
Complete 1991 CFR set	620 00	1991
Microfiche CFR Edition:			
Complete set (one-time mailing)	185 00	1988
Complete set (one-time mailing)	185 00	1989
Subscription (mailed as issued)	188.00	1990
Subscription (mailed as issued)	188 00	1991

Title	Stock Number	Price	Revision Date
Individual copies	2 00	1991

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39 consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49 consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

⁵ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

The image shows the front cover of a book. The cover is dark, possibly black or dark green, with a textured surface. The title is printed in a light color, likely white or gold. At the top, it says "Codification of". Below that, in a larger, more ornate font, is "Presidential Proclamations and Executive Orders". Underneath the title, there is a date range: "January 20, 1961 - January 30, 1963". In the center of the cover is a circular emblem featuring an eagle with spread wings. At the bottom of the cover, there is text identifying the publisher: "Office of the President, Library of Congress, National Archives and Records Administration". The book is shown at a slight angle, revealing its thickness.

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